

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

135  
UNITED STATES OF AMERICA,

816  
)  
) Philadelphia, PA  
) CR-05-440

vs.

FILED  
APR 21 2008  
ALTON COLES a/k/a NASEEM COLES,  
et al.,

)  
) February 25, 2008

Defendant:

By

MICHAEL J. BRESNICK  
Dep. Clerk

TRANSCRIPT OF TRIAL  
BEFORE THE HONORABLE R. BARCLAY SURRICK  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government:

MICHAEL J. BRESNICK, ESQUIRE  
RICHARD A. LLORET, ESQUIRE  
U.S. ATTORNEY'S OFFICE  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106

For the Defendant:  
Alton Coles

CHRISTOPHER D. WARREN, ESQUIRE  
Law Office of Christopher Warren  
1500 Walnut Street  
Philadelphia, PA 19102

For the Defendant:  
Timothy Baukman

JACK J. McMAHON, JR., ESQUIRE  
Law Office of Jack McMahon  
1500 Walnut Street, Suite 900  
Philadelphia, PA 19102

Audio Operator

INNA GOLDSHTEYN

Transcribed by:

DIANA DOMAN TRANSCRIBING  
P.O. Box 129  
Gibbsboro, New Jersey 08026-129  
(856) 435-7172  
FAX: (856) 435-7124  
Email: [Dianadoman@comcast.net](mailto:Dianadoman@comcast.net)

Proceedings recorded by electronic sound recording; transcript  
produced by transcription service

PH

(Appearances continued)

For the Defendant:  
Monique Pullins

LAURENCE HARMELIN, ESQUIRE  
P.O. Box 3574  
Westchester, PA 19381

For the Defendant:  
Asya Richardson

RONALD A. SMITH, ESQUIRE  
Ronald A. Smith and Associates  
1617 JFK Boulevard, Suite 1240  
Philadelphia, PA 19103

For the Defendant:  
Thais Thompson

PAUL J. HETZNECKER, ESQUIRE  
1420 Walnut Street, Suite 911  
Philadelphia, PA 19102

For the Defendant:  
James Morris

RONALD THOMPSON, ESQUIRE  
3002 Lincoln Drive  
Suite J  
Marlton, NJ 08053

WAYNE POWELL, ESQUIRE  
811 Church Road  
101 Parragon Building  
Cherry Hill, NJ 08002

I N D E X

Requested excerpted portions of trial as follows:

PAGE

Jury Charge

4

Jury question

64

EXHIBITS:

Ident.

Evid.

FOR THE COURT:

C-1 Index of calls

75

C-2 Index of exhibits

75

Jury Charge

4

1 (Court in Session)

2 THE CLERK: ...now in session, the Honorable R.  
3 Barclay Surrick presiding.

4 COUNSEL: Good morning, Your Honor.

5 MR. MCMAHON: Good morning, Your Honor.

6 MR. LLORET: Good morning, Your Honor.

7 MR. WARREN: Good morning, Judge.

8 THE COURT: Good morning. Have a seat.

9 MR. THOMPSON: Your Honor, do you anticipate we'll  
10 take a break before you actually finish the charge this  
11 morning?

12 THE COURT: It's possible that that will happen.  
13 We'll see how quickly it goes.

14 MR. THOMPSON: Yeah. I'm working on an issue with  
15 Mr. Lloret, and he's very graciously accommodated me, but he  
16 and I need to get something worked out before you finally send  
17 the jury in to deliberate, but if we can have an opportunity to  
18 do that, perhaps --

19 THE COURT: Well, we'll see how quickly it goes,  
20 Mr. Thompson.

21 MR. THOMPSON: Very good. Thank you.

22 THE COURT: I'd like to get the charge completed as  
23 soon as possible, but we may very well take a break depending  
24 on how long it is.

25 MR. THOMPSON: Okay. Well, I'm ask -- even if you do



## Jury Charge

5

1 finish the charge, if you would just give us a short time to  
2 work on our issue, I would imagine by the time we address it,  
3 it will only take a moment or so.

4 THE COURT: All right.

5 MR. THOMPSON: Thank you.

6 THE CLERK: Please rise.

7 (Jury in)

8 THE COURT: Okay. Have a seat, ladies and gentlemen.  
9 I hope you're all rested after a nice weekend. Ladies and  
10 gentlemen, on Friday when we recessed, I had just completed  
11 giving you the instruction with regard to managing and  
12 controlling premises used for storing or distributing  
13 controlled substances. I'm now going to talk to you about the  
14 crime of investing drug proceeds in an enterprise in interstate  
15 commerce.

16 The indictment in this -- in this case alleges in  
17 Count 176 that from on or about January 11, 2002 to on or about  
18 April 5, 2002, Defendant Alton Coles received income which was  
19 derived directly or indirectly from the conspiracy to  
20 distribute cocaine and cocaine base in which conspiracy he was  
21 a principal and that he knowingly and intentionally used and  
22 invested part of that income in the acquisition of an interest  
23 in an enterprise, that enterprise being Take Down Limited and  
24 the production partnership which were engaged in and the  
25 activities of which affected interstate commerce. That is --

## Jury Charge

6

1 those are the facts that are alleged against Mr. Coles in Count  
2 176.

3 Ladies and gentlemen, the United States Code says  
4 that it shall be unlawful for any person who has received any  
5 income derived directly or indirectly from a violation of this  
6 subchapter or subchapter 2 of this chapter punishable by  
7 imprisonment for more than one year in which such person has  
8 participated as a principal directly or indirectly invest any  
9 part -- any income or proceeds in the acquisition of an  
10 interest or an -- or the establishment or operation of any  
11 enterprise which is engaged in or the activities of which  
12 affect interstate commerce. That is the statutory provision  
13 that we're dealing with here in Count 176.

14 Now, in order to find the defendant guilty of  
15 investing drug income in an interstate enterprise, the  
16 Government has to prove the following elements beyond a  
17 reasonable doubt: first, that the defendant was a principal in  
18 the conspiracy to distribute cocaine and cocaine base alleged  
19 in Count One of the indictment; second, that defendant received  
20 income from that conspiracy; third, that the defendant  
21 knowingly and intentionally invested or used part of that  
22 income to acquire an interest in or to establish or operate an  
23 enterprise; and fourth, that the enterprise was engaged in or  
24 its activities affected interstate or foreign commerce. Those  
25 are the elements of the crime.

## Jury Charge

7

1 Ladies and gentlemen, I've told you before that a  
2 person may be guilty of an offense because he personally  
3 committed the offense or because he aided and abetted another  
4 in committing the offense. The United States Code provides  
5 whoever commits an offense against the United States or aids,  
6 abets, counsels, commands, induces, or procures its commission  
7 is punishable as a principal. It also provides that whoever  
8 willfully causes an act to be done, which if directly performed  
9 by him or another would be an offense against the United  
10 States, a person is punishable as a principal.

11 Ladies and gentlemen, the offense of investing drug  
12 income in an interstate enterprise requires that the Government  
13 prove that the defendant acted knowingly and intentionally with  
14 respect to that third element of the crime, and as I've told  
15 you, to prove that a defendant acted knowingly, the Government  
16 must prove beyond a reasonable doubt that the defendant was  
17 conscious and aware of the nature of his actions and of the  
18 surrounding facts and circumstances as specified in the  
19 definition of the offense charged.

20 To prove that a defendant acted intentionally, ladies  
21 and gentlemen, the Government must prove beyond a reasonable  
22 doubt either that it was defendant's conscious desire or  
23 purpose to act in a certain way or to cause a certain result or  
24 that defendant knew that he was acting in that way or would --  
25 or would be practically certain to cause that result.



## Jury Charge

8

1 Again, as I've told you before, in deciding whether  
2 the defendant acted knowingly and intentionally, you may  
3 consider evidence about what the defendant said, what the  
4 defendant did or failed to do, how the defendant acted, and all  
5 of the other facts and circumstances shown by the evidence that  
6 may prove what was in the defendant's mind at the time. Ladies  
7 and gentlemen, the Government is not required to prove that the  
8 defendant knew that his acts were against the law.

9 Now, what is an enterprise, ladies and gentlemen?  
10 The term enterprise includes any individual, partnership,  
11 corporation, association, or other legal entity and any union  
12 or group of individuals associated in fact although not a legal  
13 entity.

14 In this matter, ladies and gentlemen, the parties  
15 have stipulated that the entities that are alleged in Count  
16 176, that is, Take Down and its production partnership, Get  
17 That Dough, were enterprises under the statutory definition.

18 Finally, ladies and gentlemen, the final element is  
19 whether the enterprise was engaged in interstate or foreign  
20 commerce or affected interstate or foreign commerce through its  
21 activities. Interstate commerce is commerce between two or  
22 more states or between one state and the District of Columbia  
23 or between a state and the United States territory or  
24 possession. Foreign commerce is commerce between the United  
25 States or any state and another country.



## Jury Charge

9

1 Ladies and gentlemen, if you decide that there was  
2 any effect at all on interstate commerce, then that is enough  
3 to satisfy this element. The effect can be minimal.

4 Also, ladies and gentlemen, you do not have to decide  
5 whether the enterprise -- the effect of the enterprise on  
6 interstate commerce was harmful or beneficial. The Government  
7 satisfies its burden by proving an effect on interstate  
8 commerce if it proves beyond a reasonable doubt any effect,  
9 whether it was harmful or not. The defendant need not have  
10 known or intended or anticipated the enterprise's effect on  
11 interstate commerce.

12 And ladies and gentlemen, in this particular matter,  
13 the parties, again, have stipulated that the entities alleged  
14 in Count 176 were engaged in enterprise. They were  
15 enterprises, engaged in an enterprise, engaged in activities  
16 which affected interstate commerce.

17 Those are the elements of the crime of investing drug  
18 proceeds in an enterprise in interstate commerce. If the  
19 Government has proven those elements beyond a reasonable doubt,  
20 you should find the defendant guilty. If the Government has  
21 not proven those elements beyond a reasonable doubt, then you  
22 should find the defendant not guilty.

23 Ladies and gentlemen, let's talk about the crime of  
24 possessing a firearm in furtherance of a drug trafficking  
25 crime. Counts 63 and 68 of the indictment charge Timothy

## Jury Charge

10

1       Baukman with possession of a firearm in furtherance of a drug  
2       trafficking crime. Count 67 charges Defendants James Morris  
3       and Thais Thompson with this crime. Counts 68, 70, 72, 181,  
4       and 182 charge Defendant Alton Coles with this crime.  
5       Defendant Monique Pullins is charged with this crime in Count  
6       70.

7               Ladies and gentlemen, the offenses alleged in Count  
8       One, the conspiracy to distribute cocaine and cocaine base in  
9       Counts 49, 61, and 67 maintaining a property for drug  
10      trafficking and Count 62, possession with the intent to  
11      distribute cocaine are all drug trafficking crimes.

12             In order to find the defendant guilty of this  
13      offense, you must find that the Government has proven each of  
14      the following two elements beyond a reasonable doubt: first,  
15      that the defendant committed the drug trafficking crime which  
16      he or she is charged with possessing the firearm in furtherance  
17      of; second, that the defendant knowingly possessed a firearm in  
18      furtherance of this crime. If you find that the defendant  
19      possessed the firearm, you must consider whether the possession  
20      was in furtherance of the drug trafficking crime charged.

21             Ladies and gentlemen, possession in furtherance of  
22      means for the purpose of assisting in, promoting,  
23      accomplishing, advancing, or achieving the goal or objective of  
24      conspiracy to distribute controlled substances, managing and  
25      controlling a house for storing and distributing controlled

## Jury Charge

11

1 substances, or possession with intent to distribute controlled  
2 substances.

3 You should understand that the mere presence of a  
4 firearm at the scene is not enough to find possession in  
5 furtherance of the alleged underlying drug charge. The  
6 firearm's presence may be coincidental or entirely unrelated to  
7 the underlying crime.

8 Some factors that may help you to determine whether  
9 possession of a firearm furthers a drug trafficking crime  
10 include the following: the type of criminal activity that's  
11 being conducted, the accessibility of the firearm, the type of  
12 firearm, whether the firearm is stolen, whether the defendant  
13 possesses the firearm legally or illegally, whether the firearm  
14 is loaded, the time and circumstances under which the firearm  
15 is found, and the proximity of the firearm to drugs or drug  
16 profits. Those are some of the factors you may consider along  
17 with any other factors that you believe are relevant.

18 Ladies and gentlemen, those are the elements of the  
19 crime of possession of a firearm in furtherance of a drug  
20 trafficking crime. Again, if the Government has proven each of  
21 the elements by evidence beyond a reasonable doubt, you should  
22 find the defendant guilty. If the Government has not proven  
23 each of those elements beyond a reasonable doubt, then you must  
24 find the defendant not guilty.

25 Let's talk about Counts 59, 60, 69, and 71 of the

## Jury Charge

12

1 indictment. Those counts charge Alton Coles with being a  
2 convicted felon in possession of a firearm.

3 Ladies and gentlemen, the United States Code, Section  
4 922(g) (1) of Title 18 says that --

5 "It shall be unlawful for any person who has been  
6 convicted in any court of a crime punishable by  
7 imprisonment for a term exceeding one year to possess  
8 in or affecting commerce any firearm or ammunition."

9 That's what the statute says. In order to find the  
10 defendant guilty of this crime, ladies and gentlemen, you must  
11 find that the Government has proven the following three  
12 elements beyond a reasonable doubt: first, that the defendant  
13 has been convicted of a felony, that is, a crime punishable by  
14 imprisonment for a term exceeding one year; second, that after  
15 this conviction, defendant knowingly possessed a firearm. The  
16 firearms here are those described in Counts 59, 60, 69, and 71  
17 of the indictment; third, that the defendant -- that the  
18 defendant's possession was in or affecting interstate or  
19 foreign commerce.

20 Now, ladies and gentlemen, in order to find the  
21 defendant guilty of this offense, you must find that the  
22 Government proved that before the defendant -- before the date  
23 defendant is charged with possessing the firearm, defendant had  
24 been convicted of a crime and that crime was punishable by a  
25 term exceeding one year.



## Jury Charge

13

1           You have heard, ladies and gentlemen, that the  
2 parties have stipulated that defendant was convicted of a crime  
3 in State Court and that this crime is punishable by  
4 imprisonment for a term exceeding one year. The parties have  
5 also stipulated that this felony conviction occurred prior to  
6 the time that defendant is alleged to have possessed the  
7 firearm or firearms charged in the indictment. Based upon  
8 those stipulations, ladies and gentlemen, you should treat  
9 these facts as having been proven, but as I said to you before,  
10 you're not required to do so since you are the sole determiners  
11 of the facts.

12           Ladies and gentlemen, the fact that defendant was  
13 found guilty of another crime on another occasion does not mean  
14 that he committed the crimes charged in this indictment, and  
15 you must not use his guilt of the other crimes as proof of the  
16 crimes charged in this case except for the one element of this  
17 crime which I have just given to you. You may find the  
18 defendant guilty of this crime only if the Government has  
19 proven beyond a reasonable doubt all of the elements of this  
20 offense.

21           You have heard, ladies and gentlemen, that a firearm  
22 is any weapon which expels or is designed to or may readily be  
23 converted to expel a projectile by the action of an explosive.  
24 The term includes the frame or receiver of any such weapon.

25           Again, ladies and gentlemen, the parties here have

## Jury Charge

14

1 stipulated that the weapons alleged in Count 59, 60, 69, and 71  
2 are firearms within the meaning of the statute. You should  
3 therefore treat these -- these facts as having been proven, but  
4 again, you're not required to do so, because you are the sole  
5 determiners of the facts in this matter.

6 Ladies and gentlemen, to establish the second element  
7 of the offense, the Government has to prove that the defendant  
8 possessed the firearm in question. To possess means to have  
9 something within a person's control. The Government does not  
10 have to prove that the defendant physically held the firearm;  
11 that is, that he actually possessed it. As long as the firearm  
12 is within the defendant's control, he possessed it.

13 If you find that the defendant either had actual  
14 possession of the firearm or had the power and the intention to  
15 exercise control over it, even though it was not in defendant's  
16 physical possession, that is, that defendant had the ability to  
17 take actual possession of the firearm when defendant wanted to  
18 do so, you may find that the Government has proven possession.  
19 Again, possession may be momentary or fleeting.

20 Ladies and gentlemen, in addition, the law recognizes  
21 that possession may be sole or it may be joint. If one person  
22 alone possesses a firearm, that's sole possession. However,  
23 more than one person may have the power and the intention to  
24 exercise control over a firearm. This is called joint  
25 possession. If you find that the defendant had such power and

## Jury Charge

15

1 intention, then he possessed the firearm, even if he possessed  
2 it jointly with another.

3 You should understand, ladies and gentlemen, that  
4 mere proximity to a firearm or mere presence on the property  
5 where it's located or mere association with a person who does  
6 control the firearm or the property is not sufficient to  
7 support a finding of possession.

8 The Government must prove that the defendant  
9 knowingly possessed the firearm described in the indictment.  
10 This means that the defendant possessed the firearm  
11 purposefully and voluntarily and not by accident or mistake.  
12 It also means that the defendant knew the object was a firearm.

13 Finally, ladies and gentlemen, the third element of  
14 this offense, the Government must prove beyond a reasonable  
15 doubt that the possession was -- of the firearm by the  
16 convicted felon was in or affecting interstate commerce. This  
17 means that the Government must prove that at some time before  
18 the defendant's possession, the firearm had traveled in  
19 interstate commerce.

20 In this regard, ladies and gentlemen, the defendant  
21 and the Government have again stipulated that the firearm  
22 alleged in Count 59, 60, 69, and 71, that those firearms were  
23 possessed in interstate commerce as I have defined it. In  
24 other words, they crossed state lines. You should therefore  
25 treat this fact as having been established by the evidence.



## Jury Charge

16

1 However, again, you're not required to do so because you are  
2 the sole determiners of the facts in this case.

3 Now, ladies and gentlemen, with regard to Count 60 of  
4 the indictment, you heard testimony that on October 24, 2004  
5 when the crime of possession of a firearm by a convicted felon  
6 was alleged to have been committed, defendant ran from the  
7 police, and he was caught. If you believe defendant ran from  
8 the police, then you may consider this conduct along with all  
9 of the other evidence in deciding whether the Government has  
10 proven beyond a reasonable doubt that defendant committed the  
11 crime charged.

12 This conduct may indicate that the defendant thought  
13 that he was guilty of the crime charged and was trying to avoid  
14 punishment. On the other hand, ladies and gentlemen, sometimes  
15 an innocent person may run from the police for some other  
16 reason. Whether or not this evidence causes you to find that  
17 the defendant was conscious of his guilt of the crime charged  
18 and whether that indicates that he committed the crime charged  
19 is entirely up to you. You are the sole judges of the facts.

20 So, ladies and gentlemen, those are the elements of  
21 the crime of possession of a firearm by a convicted felon. If  
22 the Government has established each of those elements by  
23 evidence beyond a reasonable doubt, you should find the  
24 defendant guilty of that crime. If the Government has not  
25 established each of those elements beyond a reasonable doubt,



## Jury Charge

17

1 you must find the defendant not guilty.

2 Count 187 of the indictment, that count charges  
3 knowing possession of an unregistered firearm, and that count  
4 charges Mr. Baukman, Timothy Baukman, with knowingly receiving  
5 and possessing an unregistered firearm, namely, a machine gun  
6 in violation of the law. The relevant statute here provides as  
7 follows:

8 "It shall be unlawful for any person to receive or  
9 possess a firearm which is not registered to him in  
10 the National Firearms Registration and Transfer  
11 Record."

12 Ladies and gentlemen, in order to find the defendant  
13 guilty of knowingly receiving and possessing an unregistered  
14 firearm, you must find that the Government has established each  
15 of the following five elements beyond a reasonable doubt:  
16 first, that defendant knowingly possessed a firearm; second,  
17 that the firearm was a machine gun; third, that the defendant  
18 knew of the characteristics of the firearm, that is, that it  
19 was a machine gun; fourth, that this firearm was in operating  
20 condition; and five, that the firearm was not registered to the  
21 defendant in the National Firearms Registration and Transfer  
22 Record. It does not matter whether defendant knew that the  
23 firearm was not registered or that it had to be registered.

24 Ladies and gentlemen, to establish the first element  
25 of the offense, the Government must prove that the defendant

## Jury Charge

18

1 possessed the firearm in question, and as I just told you a  
2 minute ago, to possess means to have something within a  
3 person's control. The Government does not have to prove that  
4 the defendant physically held the firearm, that he had actual  
5 possession of it. As long as the firearm was in -- within the  
6 defendant's control, he possessed it.

7 If you find that the defendant either had actual  
8 possession of the firearm or had the power and intention to  
9 exercise control over it even though it was not in defendant's  
10 physical possession, that is, that the defendant had the  
11 ability to take actual possession of the firearm when the  
12 defendant wanted to do so, you may find that the Government has  
13 proven possession. Again, ladies and gentlemen, possession may  
14 be momentary. It may be fleeting.

15 Mere proximity to a firearm or mere presence on the  
16 property where it's located or mere association with persons  
17 who -- a person who does control the firearm or the property is  
18 insufficient to support a finding of possession. Ladies and  
19 gentlemen, proof of ownership is not required.

20 Again, the Government must prove that the defendant  
21 knowingly possessed the firearm described in the indictment,  
22 and this means that the defendant possessed the firearm  
23 purposefully and voluntarily and not by accident or mistake.  
24 It also means that the defendant knew that the object was a  
25 firearm.

## Jury Charge

19

1 In addition, ladies and gentlemen, the Government  
2 must prove that the defendant knew of the characteristics of  
3 the firearm, that is, the defendant knew that the firearm was a  
4 machine gun. Ladies and gentlemen, for purposes of this  
5 instruction and as defined by the statute, the term machine gun  
6 means any weapon which shoots, is designed to shoot, or can be  
7 readily restored to shoot automatically more than one shot  
8 without manual reloading by a single function of the trigger.

9 Those are the elements of the crime of possessing an  
10 unregistered firearm, to wit, a machine gun. If the Government  
11 has established each of those elements by evidence beyond a  
12 reasonable doubt, you should find the defendant guilty of that  
13 charge. If the Government has not proven each of those  
14 elements beyond a reasonable doubt, then you must find the  
15 defendant not guilty.

16 Okay. Ladies and gentlemen, we're working through  
17 the crimes charged. There are several more to define for you,  
18 and the next one we're going to talk about is the crime of  
19 money laundering.

20 Counts 89 through 175 of the indictment charge the  
21 defendant Timothy Baukman with money laundering. Counts 78 and  
22 79 charge the defendant Alton Coles with this crime. Defendant  
23 Asya Richardson is charged with this crime in Count 79.

24 Ladies and gentlemen, the relevant Federal statute  
25 provides in part --



## Jury Charge

20

1 "Whoever knowing that the property involved in a  
2 financial transaction represents the proceeds of some  
3 form of unlawful activity, conducts or attempts to  
4 conduct such a financial transaction which, in fact,  
5 involves the proceeds of specified unlawful activity  
6 with the intent to promote the carrying on of the  
7 specified unlawful activity or whoever knowing that  
8 the transaction is designed in whole or in part to  
9 conceal or disguise the nature, the location, the  
10 source, the ownership, or the control of proceeds of  
11 specified unlawful activity is guilty of a crime."

12 Ladies and gentlemen, for purposes of this provision,  
13 a financial transaction shall be considered to be one involving  
14 the proceeds of specified unlawful activity if it is part of a  
15 set of parallel or dependent transactions, any one of which  
16 involves the proceeds of specified unlawful activity and all of  
17 which are part of a single plan or arrangement.

18 Now, in order to find the defendant guilty of money  
19 laundering, the Government must prove the following four  
20 elements beyond a reasonable doubt: first, that on or about  
21 the dates alleged in the indictment, the defendant conducted a  
22 financial transaction which affected interstate commerce;  
23 second, that the defendant conducted the financial transaction  
24 with the proceeds of specified unlawful drug-related activity,  
25 that is, the conspiracy to distribute cocaine or cocaine base



## Jury Charge

21

1 as charged in Count One of the indictment; third, that the  
2 defendant knew that the transaction involved the proceeds of  
3 some form of unlawful activity; and fourth, as to Counts 89  
4 through 120, that Defendant Baukman conducted the financial  
5 transactions with the intent to promote the carrying on of the  
6 specified unlawful activity; that is, the conspiracy to  
7 distribute cocaine and cocaine base as alleged in Count One; as  
8 to Counts 78, 79, and 121 through 175, that Defendants Coles,  
9 Richardson, and Bachman conducted the financial transactions  
10 with knowledge that the transactions were designed in whole or  
11 in part to conceal or disguise the nature, location, source,  
12 ownership, or control of the proceeds of the conspiracy to  
13 distribute cocaine and cocaine base as alleged in Count One of  
14 the indictment.

15 Ladies and gentlemen, the first element that the  
16 Government must prove beyond a reasonable doubt is that the  
17 defendant conducted a financial transaction. The term conducts  
18 includes initiating, concluding, or participating in initiating  
19 or concluding a transaction. You should also understand that  
20 the term transaction means a purchase, sale, loan, pledge,  
21 gift, transfer, delivery, or other disposition of property or  
22 with respect to a financial institution includes deposits,  
23 withdraws, transfers between accounts, exchanges of currency,  
24 loans, and any other payment, transfer, or delivery by,  
25 through, or to a financial institution by whatever means

## Jury Charge

22

1 affected.

2 Ladies and gentlemen, financial transaction means any  
3 transaction as I've just explained that term which in any way  
4 or degree affects interstate commerce and involves one or more  
5 monetary instruments or involves the use of a financial  
6 institution which is engaged in or the activities of which  
7 affect interstate or foreign commerce in any way or degree.

8 In this matter, ladies and gentlemen, the parties  
9 have again stipulated that the transactions alleged in Counts  
10 78, 79, and 89 through 175 are financial transactions as  
11 defined -- as I just defined those terms. You should therefore  
12 treat these facts as having been proven, but again, as I've  
13 said before a number of times, you're not required to do that,  
14 because you are the sole determiners of the facts. As I said  
15 to you just a couple of minutes ago, the term interstate  
16 commerce as used in these instructions means commerce between  
17 any combination of states, territories, possessions of the  
18 United States, including the District of Columbia.

19 Ladies and gentlemen, the parties here have  
20 stipulated with regard to that element, the interstate commerce  
21 element, that the financial institutions involved in the  
22 transactions alleged in Counts 78, 79, and 89 through 175 were  
23 engaged in and had activities which affected interstate and  
24 foreign commerce. You should therefore treat those facts as  
25 having been proven, but you're not required to do so, because

## Jury Charge

23

1 you are the sole determiners of the facts.

2 Ladies and gentlemen, proceeds of specified unlawful  
3 activity, the term proceeds as used in these instructions means  
4 any property or any interest in property that someone acquires  
5 or retains as a result of criminal activity. Proceeds may be  
6 derived from an already completed offense or from a completed  
7 phase of an ongoing offense.

8 You should understand, ladies and gentlemen, that the  
9 Government is not required to prove that all of the funds  
10 involved in the charges transactions were the proceeds of  
11 specified unlawful activity. A financial transaction involves  
12 proceeds of a specified -- of a specified unlawful activity  
13 even when proceeds of a specified unlawful activity are  
14 commingled in an account with funds obtained from legitimate  
15 sources.

16 It's sufficient, ladies and gentlemen, if the  
17 Government proves beyond a reasonable doubt that at least part  
18 of the funds involved in the transaction represent such  
19 proceeds of specified unlawful activity.

20 Ladies and gentlemen, the third element of this crime  
21 that the Government must prove beyond a reasonable doubt is  
22 that in conducting a financial transaction, the defendant knew  
23 that the property involved in the financial transaction  
24 represented some form of -- proceeds from some form of unlawful  
25 activity. To satisfy this element, the Government must prove

## Jury Charge

24

1 that the defendant knew that the property involved in the  
2 transaction represented proceeds from some form of unlawful  
3 activity, that is, a felony offense under State, Federal, or  
4 foreign law. The Government is not required to prove that the  
5 defendant knew what the unlawful activity was.

6 In this case, ladies and gentlemen, the Government  
7 contends that the defendants knew that the proceeds were  
8 derived from unlawful activity, that is, the conspiracy to  
9 distribute cocaine and cocaine base, which is a felony under  
10 Federal law.

11 Ladies and gentlemen, as to Counts 89 through 120,  
12 the final element that the Government must prove beyond a  
13 reasonable doubt is that the defendant, Baukman, in conducting  
14 the financial transactions intended to promote the carrying on  
15 of the specified unlawful activity, that is, intended to  
16 promote the conspiracy to distribute cocaine and cocaine base.  
17 As to Counts 78, 79, and 121 through 175, the final element  
18 that the Government must prove beyond a reasonable doubt is  
19 that the Defendants Coles, Richardson, and Baukman in  
20 conducting the financial transactions intended to conceal or  
21 disguise the nature, the source, the ownership, or the control  
22 of the proceeds of the specified unlawful activity, proceeds  
23 from the conspiracy to distribute cocaine and cocaine base.

24 Ladies and gentlemen, whether a defendant intended to  
25 promote the carrying on of the conspiracy to distribute cocaine



## Jury Charge

25

1 and cocaine base or whether the defendant knew that the purpose  
2 of the financial transactions was to conceal or disguise the  
3 nature, location, source, ownership, or control of the proceeds  
4 of the conspiracy to distribute cocaine and cocaine base may be  
5 established by proof that the -- of the defendant's actual  
6 knowledge, by circumstantial evidence, or by the defendant's  
7 willful blindness. In other words, ladies and gentlemen,  
8 you're entitled to find based upon the circumstances  
9 surrounding the financial transaction or the attempted  
10 transaction the purpose of the activity and defendant's  
11 knowledge.

12 Now, ladies and gentlemen, the offense of money  
13 laundering requires that the Government prove that the  
14 defendant acted with the intent with respect to an element of  
15 the offense. This means that the Government must prove beyond  
16 a reasonable doubt either that it was defendant's conscious  
17 desire or purpose to act in a certain way or to cause a certain  
18 result or that defendant knew that he or she was acting in that  
19 way or would be practically certain to cause that result.

20 In deciding whether a defendant acted with intent,  
21 you may consider evidence about what the defendant said, what  
22 the defendant did or failed to do, how the defendant acted, and  
23 all of the other facts and circumstances shown by the evidence  
24 that may prove that a -- what the defendant's state of mind was  
25 at the time.

## Jury Charge

26

1 Now, with regard to the offense of money laundering,  
2 let's talk about the money laundering in Count 79. The offense  
3 of money laundering in Count 79 requires proof that the  
4 defendant Asya Richardson acted knowingly. If you find that  
5 the defendant Richardson acted in good faith, that would be a  
6 complete defense to the charge, because good faith on the part  
7 of the defendant Richardson would be inconsistent with her  
8 acting knowingly.

9 You should understand that a person acts in good  
10 faith when he or she has an honestly held belief or opinion or  
11 understanding that the acts in question were not unlawful even  
12 though the belief, opinion, or understanding turns out to be  
13 inaccurate or incorrect. Thus, in this case, if Defendant  
14 Richardson made an honest mistake or had an honest  
15 misunderstanding about whether her actions were unlawful, she  
16 did not act knowingly.

17 Defendant Richardson did not act in good faith,  
18 however, if even though she honestly held a certain opinion or  
19 belief or understanding, she also knowingly made false  
20 statements, representations, or promises to others. You should  
21 understand that Defendant Richardson does not have the burden  
22 of proving good faith. Good faith is a defense, because it's  
23 inconsistent with the requirement of the offense charged that  
24 the defendant Richardson acted knowingly.

25 As I've told you, it's the Government's burden to

## Jury Charge

27

1 prove beyond a reasonable doubt each element of the offense  
2 including the mental state. In deciding whether the Government  
3 has proven that defendant Richardson acted knowingly or  
4 instead, whether Defendant Richardson acted in good faith, you  
5 should consider all of the evidence presented that may bear on  
6 Defendant Richardson's state of mind.

7 If you find from the evidence that Defendant  
8 Richardson acted in good faith as I defined that term for you  
9 or if you find for any other reason that the Government has not  
10 proven beyond a reasonable doubt that the Defendant Richardson  
11 acted knowingly, you must find the Defendant Richardson not  
12 guilty of the offense of money laundering.

13 Now, ladies and gentlemen, as I have instructed, to  
14 find the defendant, Asya Richardson guilty of money laundering,  
15 you must find that the Government proved beyond a reasonable  
16 doubt that the defendant Richardson knew that the property  
17 involved in the financial transactions alleged in Count 79  
18 represented the proceeds of some form of unlawful activity. In  
19 this case, there is a question of whether Defendant Richardson  
20 knew this alleged fact.

21 When, as in this case, ladies and gentlemen,  
22 knowledge of a particular fact or circumstance is essential --  
23 is an essential part of the offense charged, the Government may  
24 prove that the defendant knew that fact or circumstances if the  
25 evidence proves beyond a reasonable doubt that the defendant

## Jury Charge

28

1 closed her eyes to what would otherwise have been obvious to  
2 her.

3 You should understand, ladies and gentlemen, that no  
4 one can avoid responsibility for a crime by deliberately  
5 ignoring what's obvious. Thus, ladies and gentlemen, you may  
6 find that the Defendant Richardson knew that the property  
7 involved in the financial transaction represented the proceeds  
8 of some form of unlawful activity based on evidence which  
9 proves that she was aware of the high probability of this fact  
10 and she consciously and deliberately tried to avoid learning  
11 about this fact.

12 You may not find that the defendant Richardson knew  
13 that the property involved in the financial transactions  
14 represented the proceeds of some form of unlawful activity if  
15 you find that the defendant actually believed that this fact  
16 did not exist. Also, you may not find that the defendant  
17 Richardson knew that the property involved in the financial  
18 transaction represented the proceeds from some form of unlawful  
19 activity if you find only that defendant Richardson should have  
20 known the fact or that a reasonable person would have known the  
21 fact -- would have known of a high probability of that fact.

22 It's not enough, ladies and gentlemen, that Defendant  
23 Richardson may have been stupid or foolish or may have acted  
24 out of inadvertence or accident. You must find that Defendant  
25 Richardson was actually aware of a high probability that the



## Jury Charge

29

1 property involved in the financial transaction represented the  
2 proceeds of some form of unlawful activity, deliberately  
3 avoided learning about it, and did not actually believe that  
4 the property was not proceeds from some form of unlawful  
5 activity.

6 Ladies and gentlemen, those are the elements of the  
7 crimes of -- the crime of money laundering. If the Government  
8 has established each of the elements of the crime in each count  
9 beyond a reasonable doubt, then you should find the defendant  
10 guilty of that crime. If you find that the Government has not  
11 met its burden of proof, then you must find the defendant not  
12 guilty.

13 Now, in Count 77, ladies and gentlemen, Defendant  
14 Coles is charged with knowingly conspiring and agreeing with  
15 Kristina Latney to commit the crime of money laundering. In  
16 Count 80, the defendant Coles and Asya Richardson are charged  
17 with that crime, conspiracy -- agreeing together to commit the  
18 money laundering in violation of federal law. Let's talk about  
19 Count 77 and 80 for just a minute.

20 Title 18 of the United States Code, Section 1956H  
21 makes it a federal crime for anyone to conspire or agree with  
22 someone else to do something which, if actually carried out,  
23 would be a violation of the money laundering statute, and I've  
24 just given you the elements of money laundering.

25 In order to find the defendant guilty of conspiracy

## Jury Charge

30

1 to launder money, you must find that the Government has proven  
2 beyond a reasonable doubt each of the following two elements:  
3 first, that two or more persons in some way or manner came to a  
4 mutual understanding to try to accomplish a common and unlawful  
5 plan, that is, to violate the federal money laundering statute,  
6 and second, that the defendant, knowing of the unlawful purpose  
7 of the plan, willfully joined in that plan.

8 As I've told you already, under the law, a conspiracy  
9 is an agreement or a kind of partnership in criminal purposes.  
10 In a conspiracy, each member of the conspiracy becomes the  
11 agent or the partner of every other member of the conspiracy.

12 You should understand that a person may become a  
13 member of a conspiracy without full knowledge of all of the  
14 details of the unlawful scheme. So if a defendant has a  
15 general understanding of the unlawful purpose of the plan and  
16 knowingly joins in that plan on one occasion, that is  
17 sufficient to convict the defendant of conspiracy even though  
18 the defendant did not participate before or even though the  
19 defendant played only a minor part, and as I've told you, mere  
20 presence at the scene of a transaction or event or the mere  
21 fact that certain persons may have associated with each other  
22 and they have assembled together and discussed common aims and  
23 interests does not standing alone establish proof of a  
24 conspiracy. Also, ladies and gentlemen, a person who has no  
25 knowledge of a conspiracy but who happens to act in a way which

## Jury Charge

31

1 advances some purpose of a conspiracy does not thereby become a  
2 conspirator.

3 Ladies and gentlemen, those are the elements of the  
4 crime of conspiracy to commit the crime of money laundering.  
5 If the Government has established each of those elements beyond  
6 a reasonable doubt, you should find the defendant guilty of  
7 that crime. If the Government has not met its burden, then you  
8 must find the defendant not guilty.

9 Let's talk about the crime of wire fraud. Counts 87  
10 and 88 of the indictment charge Alton Coles and Asya Richardson  
11 with the crime of wire fraud. Ladies and gentlemen, the  
12 relevant statute makes it a crime for anyone to use interstate  
13 wire communications facilities in carrying out a scheme to  
14 defraud.

15 In order to find the defendant guilty of wire fraud,  
16 you must find that the Government has established each of the  
17 following three elements beyond a reasonable doubt: first,  
18 that the defendant devised a scheme to defraud or to obtain  
19 money or property by materially false or fraudulent pretenses,  
20 representations, or promises; second, that the defendant acted  
21 with the intent to defraud; and third, that in advancing,  
22 furthering, or carrying out the scheme, the defendant  
23 transmitted any writing, signal, or sound by means of wire,  
24 radio, or television communication in interstate commerce or  
25 caused the transmission of any writing, signal, or sound by



## Jury Charge

32

1 means of wire, radio, or television communication in interstate  
2 commerce. Fourth, ladies and gentlemen, if you find that the  
3 defendant has committed the first three elements that I just  
4 went through with you, you must also then determine whether the  
5 wire fraud scheme affected a financial institution, and you  
6 must make that finding beyond a reasonable doubt.

7 Let's talk about a scheme to defraud or to obtain  
8 money by false or fraudulent pretenses, representations, or  
9 promises. The first element, ladies and gentlemen, is that the  
10 defendant knowingly devised a scheme to defraud in this  
11 instance Chase Bank of money or property by materially false or  
12 fraudulent pretenses, representations, or promises.

13 You should understand, ladies and gentlemen, that a  
14 scheme is merely a plan for accomplishing an object. Fraud is  
15 a general term which embraces all of the various means by which  
16 one person can gain the advantage over another by false  
17 representations, suppression of the truth, or deliberate  
18 disregard of the truth. So, ladies and gentlemen, a scheme to  
19 defraud is any plan, device, or course of action to deprive  
20 another of money or property by means of false or fraudulent  
21 pretenses, representations, or promises reasonably calculated  
22 to deceive persons of average prudence.

23 In this case, the indictment alleges that the scheme  
24 to defraud was carried out by making false and fraudulent  
25 claims and documents. The representations that the Government

## Jury Charge

33

1 charges were made as part of a scheme to defraud, and they're  
2 set forth in the indictment.

3 The Government is not required to prove every  
4 misrepresentation charged in the indictment. It's sufficient  
5 if the Government proves beyond a reasonable doubt that one or  
6 more of the alleged material misrepresentations were made in  
7 furtherance of the alleged scheme to defraud. However, ladies  
8 and gentlemen, you cannot convict the defendant unless all of  
9 you agree as to at least one of the material  
10 misrepresentations.

11 You should understand that a statement,  
12 representation, claim, or document is false if it is untrue  
13 when made and if the person making the statement,  
14 representation, claim, or document or causing it to be made  
15 knew that it was untrue at the time that it was made. A  
16 representation or statement is fraudulent if it was falsely  
17 made with the intention to deceive.

18 In addition, ladies and gentlemen, deceitful  
19 statements of half truths or the concealment of material facts  
20 or the expression of an opinion not honestly entertained may  
21 constitute false or fraudulent statements. The arrangement of  
22 words or the circumstances in which they're used may convey the  
23 false and deceptive appearance.

24 You should understand that deception need not be  
25 premised on spoken or written words alone. If there is

## Jury Charge

34

1 deception, the manner in which it is accomplished is  
2 immaterial.

3 The false or fraudulent representation, ladies and  
4 gentlemen, must relate to a material fact or matter. A  
5 material fact is one which would reasonably be expected to be  
6 of concern to a reasonable and prudent person in relying upon  
7 the representation or statement in making a decision with  
8 respect to the granting of a loan in this instance.

9 This means, ladies and gentlemen, that if you find  
10 that a particular statement of fact was false, you must  
11 determine whether the statement was one that a reasonable  
12 person might have considered important in making his or her  
13 decision. The same principle applies to fraudulent half truths  
14 or omissions of material fact. In order to establish a scheme  
15 to defraud, the Government must also prove that the alleged  
16 scheme contemplated depriving another of money or property.

17 Ladies and gentlemen, it's not necessary that the  
18 Government prove that the defendants actually realized any gain  
19 from the scheme or that the intended victim actually suffered a  
20 loss. In this case, it so happens that the Government does  
21 contend that the proof establishes that persons were defrauded  
22 and that the defendants realized gain, although whether or not  
23 the scheme actually succeeded is really not the question. You  
24 may, however, consider whether it succeeded in determining  
25 whether the scheme existed.

## Jury Charge

35

1           If you find that the Government has proven beyond a  
2 reasonable doubt that the scheme to defraud charged in the  
3 indictment did exist and that the defendants knowingly devised  
4 or participated in the scheme charged, you should then consider  
5 the second element of the offense. The second element that the  
6 Government must prove beyond a reasonable doubt is the -- that  
7 the defendants acted with the specific intent to defraud.

8           To act with the intent to defraud, ladies and  
9 gentlemen, means to act knowingly and with the intention or  
10 purpose to deceive or cheat. In considering whether defendants  
11 acted with the intent to defraud, you may consider, among other  
12 things, whether they acted with a desire or purpose to bring  
13 about some gain or benefit to themselves or someone else or  
14 with a desire or purpose to cause some loss to someone.

15           The third element that the Government must prove  
16 beyond a reasonable doubt is that in advancing, furthering, or  
17 carrying out the scheme, defendants transmitted a writing,  
18 signal, or sound by means of wire, radio, or television  
19 communication in interstate commerce or caused such a  
20 transmission to be made. The phrase transmits means -- let me  
21 start again. The phrase transmit by means of wire, radio, or  
22 television communication in interstate commerce means to send  
23 from one state to another by means of telephone or telegraph  
24 lines or by means of radio or television. The phrase includes  
25 a telephone conversation by a person in one state with a person



## Jury Charge

36

1 in another or an electronic signal sent from one state to  
2 another such as a fax or a financial wire.

3 Ladies and gentlemen, the Government is not required  
4 to prove that the defendants actually used a wire communication  
5 in interstate commerce or that defendants even intended that  
6 anything be transmitted in interstate commerce by means of wire  
7 or radio or television communication to further or to advance  
8 or to carry out the scheme to defraud or to obtain money or  
9 property by means of false or fraudulent pretenses,  
10 representations, or promises. However, the Government must  
11 prove beyond a reasonable doubt that a transmission by a wire  
12 or radio or television communication facility in interstate  
13 commerce was, in fact, used in some manner to further or to  
14 advance or to carry out the scheme to defraud.

15 The Government must also prove either that the  
16 defendant used the wire, radio, television communication in  
17 interstate commerce or the defendant knew that the use of the  
18 wire, radio, or television communication in interstate commerce  
19 would follow in the ordinary course of business events or that  
20 the defendant should reasonably have anticipated that the wire,  
21 radio, or television communication in interstate commerce would  
22 be used.

23 Ladies and gentlemen, it's not necessary that the  
24 information transmitted by means of wire, radio, or television  
25 communication in interstate commerce itself was false or

## Jury Charge

37

1 fraudulent or contained any false or fraudulent pretenses,  
2 representations or promises or contained any request for money  
3 or anything of value. However, the Government must prove  
4 beyond a reasonable doubt that the use of the wire, radio,  
5 television communication in interstate commerce furthered or  
6 advanced or carried out the scheme in some way.

7 You should understand that each transmission by wire  
8 communication in interstate commerce to advance or further or  
9 carry out a scheme may be a separate violation of the wire  
10 fraud statute, and in this situation, ladies and gentlemen, the  
11 parties have stipulated that Chase Bank, the entity identified  
12 as the victim of the fraud alleged in Counts 87 and 88 was a  
13 financial institution within the meaning of the United States  
14 Code.

15 Ladies and gentlemen, if you find that the Government  
16 has established each of the elements of the crime of wire fraud  
17 beyond a reasonable doubt, then you should find the defendant  
18 guilty of that crime. If you're not satisfied that the  
19 Government has met its burden, then you must find the defendant  
20 not guilty.

21 Now, ladies and gentlemen, I have a couple of  
22 additional crimes to go through and then some final  
23 instructions for you, but in looking at the clock, I'm going to  
24 take a brief recess, let you go out, relax for a few minutes,  
25 and then we'll bring you back and give you the final

Jury Charge

38

1 instructions.

2 Recess for ten minutes.

3 (Recess)

4 THE COURT: Okay, ladies and gentlemen. Have a seat.  
5 We are coming down the home stretch. Ladies and gentlemen,  
6 Counts 81 through 86 of this indictment charge the defendant,  
7 Alton Coles, with structuring a currency transaction, charge  
8 him with structuring to evade the reporting requirements under  
9 federal law.

10 Ladies and gentlemen, the United States Code makes it  
11 a crime for anyone to structure any transaction with one or  
12 more domestic financial institutions in order to evade the  
13 reporting requirements under the law. Section 5313(a) of the  
14 Code in its implementing regulations require the filing of a  
15 government form called a currency transaction report or a CTR.  
16 Those regulations require that every domestic financial  
17 institution which engages in a currency transaction over  
18 \$10,000 must file a report with the Internal Revenue Service  
19 furnishing, among other things, the identity and address of the  
20 person engaging in the transaction, the person or entity, if  
21 any, for whom he is acting, and the amount of the currency  
22 transaction. That currency transaction report must be filed  
23 within 15 days of the transaction.

24 In order to find the defendant guilty of structuring  
25 a currency transaction to evade reporting obligations, you must

## Jury Charge

39

1 find that the Government has established the following three  
2 elements beyond a reasonable doubt: first, that the defendant  
3 knew that a financial institution was legally obligated to  
4 report currency transactions in excess of \$10,000; second, that  
5 defendant engaged in structuring of a currency transaction; and  
6 third, that the defendant acted with the intent to evade the  
7 reporting requirement.

8 With regard to the first element that the Government  
9 must prove beyond a reasonable doubt, it must prove that at the  
10 time the transaction described in the indictment occurred,  
11 defendant knew that a financial institution was legally  
12 obligated to report currency transactions in excess of \$10,000.  
13 You should understand that under the law, a financial  
14 institution is defined as an insured bank under the Federal  
15 Deposit Insurance Act.

16 Now, I just stated that under Section 5313, a  
17 financial institution is required to file a report with the  
18 Federal Government any time that the transaction involved is  
19 \$10,000 or more in United States currency. That report you've  
20 heard referred to is what I said a minute ago. It's called the  
21 CTR.

22 In order to satisfy the first element, the Government  
23 must prove that the defendant knew that the financial  
24 institution involved would be required to file that CTR for any  
25 currency transaction in excess of \$10,000. The question is



## Jury Charge

40

1 whether a person acted -- the question of whether a person  
2 acted with knowledge is a question of fact for you to  
3 determine, like any other fact question.

4 Direct proof of knowledge is not always available,  
5 and such proof is not required. The ultimate fact of whether  
6 someone knew something at a particular time, though subjective,  
7 may be established by circumstantial evidence based upon a  
8 person's outward manifestations, his words, his conduct, his  
9 acts, and all of the surrounding circumstances disclosed by the  
10 evidence and the rational and logical inferences to be drawn  
11 from that evidence.

12 The second element that the Government must prove  
13 beyond a reasonable doubt is that the defendant engaged in  
14 structuring of a currency transaction. You should understand,  
15 ladies and gentlemen, that a currency transaction is any  
16 financial transaction which includes the physical transfer of  
17 currency. For example, taking a check to the bank and cashing  
18 it is a currency transaction, but depositing a check in a bank  
19 is not. Similarly, purchasing something and paying for it in  
20 cash is a currency transaction, but paying for it with a check  
21 or a credit card is not.

22 As I instructed you before, engaging in a currency  
23 transaction in an amount greater than \$10,000 requires the  
24 financial institution to file that CTR. You should understand  
25 that structuring a transaction occurs when a person acting

## Jury Charge

41

1 alone or with others conducts or attempts to conduct one or  
2 more currency transactions in any amount at one or more  
3 financial institutions on one or more days for the purpose of  
4 evading reporting -- the reporting requirements that I just  
5 described to you.

6 Structuring includes but it's not limited to breaking  
7 down a sum of currency exceeding \$10,000 into smaller amounts,  
8 each less than \$10,000, and then conducting a series of  
9 separate currency transactions in those smaller amounts in  
10 order to avoid the reporting requirement. The transactions  
11 need not exceed \$10,000 in any single financial institution or  
12 on any single day in order to constitute structuring.

13 The third element that the Government must prove  
14 beyond a reasonable doubt is that the defendant engaged in  
15 structuring with the intent to avoid or to evade that reporting  
16 requirement. As I've indicated to you, a person acts  
17 intentionally when he acts deliberately and purposefully, and  
18 defendant's acts must have been the product of defendant's  
19 conscious object rather than the product of mistake or  
20 accident.

21 You should understand that direct proof of  
22 defendant's intent is almost never available. However,  
23 sometimes it can be shown that a person wrote or stated that at  
24 a given time, that person intended a particular result.

25 Direct proof is not required however. The ultimate

## Jury Charge

42

1 fact of intent, though subjective, may be established by  
2 circumstantial evidence based upon defendant's outward  
3 manifestations, his words, his conduct, and his acts and all of  
4 the surrounding circumstances disclosed by the evidence as  
5 well, again, as the -- the rational and logical inferences to  
6 be drawn from those circumstances.

7 So, ladies and gentlemen, those are the elements of  
8 the crime of structuring to evade the reporting requirements.  
9 If the Government has established each of those elements by  
10 evidence beyond a reasonable doubt, you should find the  
11 defendant guilty of that crime. If the Government has not met  
12 its burden, then you must find the defendant not guilty.

13 Let's talk now about Counts 189, 190, and 191 of the  
14 indictment. They charge the defendant, Thais Thompson, with  
15 making materially false statements in her grand jury testimony.

16 Ladies and gentlemen, the relevant federal statute  
17 makes it a federal offense to knowingly make a false material  
18 declaration to a grand jury under oath. In order to find the  
19 defendant guilty of making false statements under oath, you  
20 must find that the Government has proven beyond a reasonable  
21 doubt each of the five following elements: first, that the  
22 defendant gave testimony under oath before a federal grand  
23 jury; second, that defendant testified as detailed in the  
24 indictment; third, that the testimony was false; fourth, that  
25 the defendant knew that the testimony was false when she gave



## Jury Charge

43

1 it; and fifth, that the false statement was material.

2 Ladies and gentlemen, a declaration is false if it is  
3 untrue when it is made. You should understand, ladies and  
4 gentlemen, that a declaration is material to the grand jury's  
5 investigation if it is capable of affecting or influencing the  
6 grand jury inquiry or decision. It is not necessary for the  
7 Government to prove that the grand jury was, in fact, misled or  
8 influenced in any way by the false declaration.

9 Ladies and gentlemen, Counts 189, 190, and 191 of the  
10 indictment allege that the defendant, Thompson, knowingly made  
11 several false statements under oath. In order for you to  
12 convict, the Government is not required to prove and you need  
13 not find that all of the statements alleged to be false in  
14 Count 189 and Count 190 and Count 191 of the indictment are  
15 false. The Government, however, must prove beyond a reasonable  
16 doubt that at least one specific statement alleged in Count 189  
17 or Count 190 or Count 191 was false.

18 Ladies and gentlemen, it's not sufficient that some  
19 members of the jury agree that one statement is false while  
20 other members of the jury agree that another statement is  
21 false. There must be at least one specific statement that each  
22 of you agree was false and that each of you agree that the  
23 defendant knew to be false.

24 Ladies and gentlemen, the Government is required to  
25 prove beyond a reasonable doubt and you must unanimously find



## Jury Charge

44

1 that at least one of the same statements alleged in Count 189,  
2 in Count 190, in Count 191 of the indictment was false and that  
3 the defendant knew that the statement was false when the  
4 defendant made the statement.

5 Ladies and gentlemen, it's a defense to the charge of  
6 making materially false statements to the Federal grand jury as  
7 charged in Counts 189, 190, and 191 if the evidence shows  
8 either of the following: first, that the defendant made a  
9 statement in response to a question that was ambiguous or  
10 capable of being understood in more than one way and the answer  
11 given by the defendant to one reasonable interpretation of the  
12 ambiguous question was not false; second, that defendant made a  
13 statement in response to a question that was clear and  
14 unambiguous but the answer to the clear question was ambiguous  
15 and capable of being understood in more than one way and one  
16 reasonable interpretation of the answer given by the defendant  
17 was not false.

18 Ladies and gentlemen, as long as a statement or an  
19 answer to a question or a reasonable interpretation of both  
20 statements and answers are literally or technically true, the  
21 crime of making a false statement to a federal grand jury  
22 alleged in Count 189, Count 190, Count 191 of the indictment  
23 has not been made out.

24 In considering the testimony alleged to be false, you  
25 should view the context and sequence of the question and

## Jury Charge

45

1 answer. Words used in both should be given their normal and  
2 customary meaning unless the context in which the words were  
3 used clearly shows that both the person asking the question and  
4 the witness giving the answer mutually understood that some  
5 other meaning was to be given to the word or words.

6 Ladies and gentlemen, if you find that a statement or  
7 an answer was literally or technically true, then any intent on  
8 the part of the defendant to be ambiguous or to confuse or to  
9 evade or even to mislead is irrelevant and you must find the  
10 defendant not guilty.

11 So, ladies and gentlemen, those are the elements of  
12 the crime of making a false statement to a federal grand jury.  
13 If you find that the Government has established each of those  
14 elements by evidence beyond a reasonable doubt, you should find  
15 the defendant guilty of the crime. If you find that the  
16 Government has not met its burden, then you must find the  
17 defendant not guilty.

18 Ladies and gentlemen, the last crime that I'm going  
19 to define for you -- and you don't have to start clapping -- is  
20 the crime of accessory after the fact to the crime of  
21 conspiracy. Count 192 of the indictment charges that on or  
22 about June 7, 2005, Defendant Thais Thompson acted as an  
23 accessory after the fact to the crime of conspiracy to  
24 distribute 5 kilograms or more of cocaine or 50 grams or more  
25 of cocaine base committed by James Morris.

## Jury Charge

46

1           You should understand, ladies and gentlemen, that  
2           it's a Federal crime for a person to act as an accessory after  
3           the fact. An accessory after the fact is a person who, knowing  
4           that the offense against the United States has been committed  
5           by another, receives, relieves, comforts, or assists that  
6           person in order to hinder or prevent that person's arrest,  
7           trial, or punishment.

8           In order to find the defendant, Thais Thompson,  
9           guilty of being an accessory after the fact, you must find that  
10          the Government has established the following three elements  
11          beyond a reasonable doubt: first, that the defendant, Morris,  
12          committed each of the elements of a crime of conspiracy to  
13          distribute 5 kilograms or more of cocaine and 50 grams or more  
14          of cocaine base, which elements I have discussed with you  
15          already; second, that the defendant, Thompson, knew that Morris  
16          committed the crime; and third, that with that knowledge,  
17          Defendant Thompson in some way assisted Defendant Morris in  
18          order to hinder or prevent the defendant Morris's arrest or  
19          trial or punishment for the crime of conspiracy to distribute  
20          the cocaine or cocaine base.

21          Those are the elements of the crime of being an  
22          accessory after the fact. If the Government has established  
23          each of those elements by evidence beyond a reasonable doubt,  
24          you should find the defendant guilty of the crime. If the  
25          Government has not met its burden, then you must find the



## Jury Charge

47

1 defendant not guilty.

2 Ladies and gentlemen, those are all of the crimes  
3 that I'm going to define for you. I'm going to talk to you for  
4 a few minutes about accomplice liability and a couple of other  
5 subjects, and then I'm going to give you some final  
6 instructions on how you should conduct your deliberations.

7 Several counts in this indictment you will see allege  
8 that defendant committed and aided and abetted the commission  
9 of an offense charged in that count. A person may be guilty of  
10 an offense because the person personally commits the offense or  
11 because the person aided and abetted another in committing the  
12 offense. A person who has aided and abetted another in  
13 committing an offense is often called an accomplice. A person  
14 who is an accomplice -- the person who the accomplice aids and  
15 abets is known as the principal.

16 In order to find a defendant guilty of an offense  
17 because the defendant aided and abetted the principal in  
18 committing the offense, you must find that the Government has  
19 proven beyond a reasonable doubt the following four  
20 requirements: first, that the alleged principal committed the  
21 offense charged by committing each of the elements of the  
22 offense charged as I have given you those elements; second,  
23 that the defendant knew that the offense charged was going to  
24 be committed or that they were being committed by the alleged  
25 principal; third, that the defendant did some act for the



## Jury Charge

48

1 purpose of aiding, assisting, soliciting, facilitating, or  
2 encouraging the alleged principal in committing the offense and  
3 with the intent that the alleged principal would commit the  
4 offense; and fourth, that the defendant's acts did in some way  
5 aid, assist, facilitate, or encourage the allege principal to  
6 commit the offense.

7 Ladies and gentlemen, the defendant's acts need not  
8 themselves be against the law. You should understand that  
9 evidence that a -- that the defendant was merely present during  
10 the commission of an offense is not enough for you to find him  
11 or her guilty as an aider and abetter. In addition, if the  
12 evidence shows that the defendant knew that the offense was  
13 being committed or was about to be committed, but does not  
14 prove beyond a reasonable doubt that it was the defendant's  
15 intent or purpose to aid, assist, encourage, facilitate, or  
16 otherwise associate himself or herself with the offense, you  
17 may not find the defendant guilty of the offense as an aider  
18 and abetter.

19 The Government must prove beyond a reasonable doubt  
20 that the defendant in some way participated in the offense  
21 committed by the alleged principal as something that the  
22 defendant wished to bring about or to make succeed.

23 Now, ladies and gentlemen, during the course of this  
24 trial, some of the defendants testified while others did not.  
25 You should understand, ladies and gentlemen, that a defendant

## Jury Charge

49

1 has an absolute constitutional right not to testify. A  
2 defendant has an absolute right not to offer evidence. A  
3 defendant does not even have to cross-examine witnesses.

4 The burden of proof, ladies and gentlemen, remains  
5 with the Government throughout the entire trial and never  
6 shifts to a defendant. The defendant is never required to  
7 prove that he or she is innocent.

8 Ladies and gentlemen, you must not attach any  
9 significance to the fact that a defendant did not testify. You  
10 must not draw any adverse inference against the defendant  
11 because he or she did not take the witness stand. Do not  
12 consider for any reason at all the fact that a defendant did  
13 not testify. Do not discuss that fact during your  
14 deliberations or let that fact influence your decision in any  
15 way.

16 Now, during the trial, you heard testimony of  
17 witnesses and you heard arguments by counsel that the  
18 Government did not use specific investigative techniques in  
19 this case. You heard evidence and arguments that fingerprint  
20 evidence was not offered, DNA analysis and the use of narcotics  
21 detection equipment was not used.

22 Ladies and gentlemen, you may consider these facts in  
23 deciding whether the Government has met its burden of proof,  
24 because I told you you should look at all of the evidence  
25 presented or the lack of evidence presented in deciding whether

## Jury Charge

50

1 the defendant is guilty or not guilty. However, ladies and  
2 gentlemen, you should understand that there is no legal  
3 requirement that the Government use any specific investigative  
4 techniques.

5 There is no requirement that the Government use all  
6 possible investigative techniques. There is no requirement  
7 that the Government attempt to take fingerprints or offer  
8 fingerprint evidence or gather DNA analysis or use narcotic  
9 detection equipment. Your concern, ladies and gentlemen, in  
10 this matter is to determine whether or not based upon the  
11 evidence presented the defendant is guilty beyond a reasonable  
12 doubt. That should be the focus of your inquiry.

13 Finally, ladies and gentlemen, you heard evidence  
14 during this trial that Monique Pullins, Asya Richardson, and  
15 Thais Thompson have a reputation in the community for being  
16 law-abiding citizens. This testimony, ladies and gentlemen,  
17 this character evidence should be considered by you alone with  
18 all of the other evidence in the case in deciding whether the  
19 Government has proved the crimes charged beyond a reasonable  
20 doubt.

21 Now, those are the instructions that I'm going to  
22 give you with regard to the law, with regard to the evidence,  
23 with regard to the crimes charged. Let me talk to you now  
24 about your deliberations when you go out to deliberate in this  
25 case.



Jury Charge

51

1 Ladies and gentlemen, the first order of business for  
2 you should be the selection of a foreperson.

3 MR. HETZNECKER: Your Honor, can I see you one  
4 moment?

5 (At sidebar)

6 MR. HETZNECKER: The instruction on offering willful  
7 blindness and good faith with respect to Thais Thompson on  
8 accessory after the fact was omitted. It was part of your  
9 instructions as drafted and not part of what you just read to  
10 the jury.

11 THE COURT: I don't believe that it's an appropriate  
12 instruction with regard to the accessory after the fact.

13 MR. HETZNECKER: Well, Your Honor -- Your Honor  
14 provided it in your -- you changed your mind then?

15 THE COURT: The final instructions that will go out  
16 with the jury will not include that.

17 A FEMALE SPEAKER: You took out --

18 THE COURT: What?

19 A FEMALE SPEAKER: -- willful blindness, and  
20 remember, you took out good faith as well.

21 THE COURT: That's right. It's not appropriate.

22 MR. HETZNECKER: I don't think you made that ruling.  
23 I got -- the packet that I received had both --

24 THE COURT: Well --

25 MR. HETZNECKER: -- willful blindness and good faith.



Jury Charge

52

1 THE COURT: Well, we have been putting this together  
2 and if I didn't get the final draft, that's --

3 MR. HETZNECKER: It was my expectation that this was  
4 going to be in it. So --

5 THE COURT: Well --

6 A FEMALE SPEAKER: Can I just tell you, our -- we  
7 understood that his representation was that the good faith was  
8 only in response to willful blindness.

9 THE COURT: That's true.

10 MR. HETZNECKER: So Your Honor's position is this  
11 will not be read to the jury?

12 THE COURT: I don't believe it is appropriate to read  
13 it to the jury at this juncture.

14 MR. HETZNECKER: Note my objection for the record.

15 THE COURT: All right.

16 (Sidebar concluded)

17 THE COURT: Okay. As I was saying, the first order  
18 of business for you should be the selection of a foreman,  
19 forelady, foreperson. The foreperson has the following  
20 responsibilities, first of all, to see that the deliberations  
21 get started, see that they are conducted in an orderly fashion.

22 The foreperson will also speak for the jury in open  
23 court. The foreperson will fill out the verdict slip that I  
24 will send out with you, and the foreperson will sign that  
25 verdict slip, and for all of that work, the foreperson doesn't

## Jury Charge

53

1 get one penny more than the rest of you. So make your decision  
2 as to who the foreperson of the jury is going to be, and go on  
3 to the more important issues that you have to decide in this  
4 matter. You should understand that the views or the vote of a  
5 foreperson is not entitled to any greater weight than the views  
6 of all of your fellow jurors.

7 Ladies and gentlemen, I want to remind you that your  
8 verdict, whether it's guilty or not guilty, must be unanimous.  
9 To find any of the defendants guilty of an offense, every one  
10 of you must agree that the Government has overcome the  
11 presumption of innocence with evidence that proves each element  
12 of the offense beyond a reasonable doubt. To find any  
13 defendant not guilty, every one of you must agree that the  
14 Government has failed to convince you beyond a reasonable  
15 doubt.

16 Ladies and gentlemen, if you decide that the  
17 Government has proven any defendant guilty, then it's my  
18 responsibility to decide what is an appropriate penalty. You  
19 should not consider any possible penalty or any future  
20 consequence of your verdict. Your job is to determine whether  
21 based upon the evidence and testimony presented, the Government  
22 has proven the charge beyond a reasonable doubt. If you  
23 determine that it has, then it becomes my responsibility to  
24 deal with the matter.

25 Ladies and gentlemen, I've told you several times

## Jury Charge

54

1 that your verdict must be based upon the evidence received in  
2 this case and the law as I've given it to you. If I've said  
3 anything during the course of this trial or done anything  
4 during the course of the trial that you think indicates how I  
5 feel about this matter, you are absolutely wrong. It is your  
6 job to decide this case. As I told you earlier, it's my job to  
7 make rulings with regard to evidence and see that these parties  
8 get a fair trial. It's your job to determine whether the  
9 Government has met its burden of proof.

10 Ladies and gentlemen, now that all of the evidence is  
11 in and you've heard all of the arguments of counsel and you've  
12 heard the instructions of the Court, you are finally free to  
13 talk about this case in the jury room. I have cautioned you  
14 every time you've left the jury box not to do that, but when  
15 you go out to deliberate, it's your duty to talk with each  
16 other about the evidence that you heard and to make every  
17 reasonable effort to reach a unanimous agreement. You should  
18 talk to each other. You should listen carefully to each  
19 other's views. You should keep an open mind and listen to what  
20 your fellow jurors have to say. You should not hesitate to  
21 change your mind if you become convinced that other jurors are  
22 right and that your original position was incorrect, but,  
23 ladies and gentlemen, you do not ever have to change your mind  
24 just because other jurors see things differently or just  
25 because you want to get the case over.

## Jury Charge

55

1 Ladies and gentlemen, your vote must be exactly that,  
2 your own vote. It's important for you to reach a unanimous  
3 agreement but only if you do so honestly and in good conscience  
4 and if you listen carefully to your fellow jurors and decide  
5 the case based upon the evidence presented.

6 Ladies and gentlemen, nobody is going to be allowed  
7 to hear your discussions in the jury room, and no record will  
8 be made of what you say. You should all feel completely free  
9 to speak your mind.

10 If you elected to take notes during the course of  
11 this trial, and I saw that many of you were, your notes should  
12 be used only as a memory aid. You should not give your notes  
13 any greater weight than your independent recollection of the  
14 evidence. You should rely upon your own independent  
15 recollection of the evidence or the lack of evidence, and you  
16 should not be unduly influenced by the notes of other jurors.  
17 Notes are not entitled to any more weight than the memory and  
18 impressions of each juror.

19 Ladies and gentlemen, once you start your  
20 deliberations, don't talk about the case to the court officials  
21 or to me or to anyone else. If you have a question or you have  
22 a message that you want to send to the Court, the foreperson  
23 should write down that question or message on a piece of paper,  
24 sign it, and give it to the court officials who will give it to  
25 me. I will talk with the lawyers about your inquiry, and I



## Jury Charge

56

1 will respond as soon as I can. In the meantime, you should go  
2 on, if possible, and continue your deliberations.

3 Ladies and gentlemen, I'm going to send out a number  
4 of exhibits with you. If you want to see any other exhibits  
5 that have not been sent out, you should send a message out. I  
6 will talk with counsel, and we will determine whether I can  
7 appropriately give you what you've requested.

8 Finally, ladies and gentlemen, don't write down or  
9 tell anyone how you or anyone else has voted during the course  
10 of your deliberations. That information should stay secret  
11 until you've finished your deliberations. If you have occasion  
12 to communicate with the Court while you're deliberating, do not  
13 disclose the number of jurors who have voted one way or the  
14 other in the matter.

15 Finally, ladies and gentlemen, the verdict slip. I  
16 have prepared the verdict slip that is rather long, and this is  
17 going to go out with you. When you reach a unanimous verdict,  
18 the foreperson should write the verdict on the form, should  
19 date and sign the form, and return it to the Court and give the  
20 form to my deputy who will give it to me.

21 If you decide that the Government has proven a  
22 defendant guilty of any of the offenses charged beyond a  
23 reasonable doubt, say so by having your foreman mark the  
24 appropriate place on this verdict slip. If you decide that the  
25 Government has not proven a defendant guilty by some or all of

## Jury Charge

57

1 the evidence of a crime charged, say so by having your  
2 foreperson mark the appropriate place on the verdict slip.

3 Now, that -- this verdict slip goes through each of  
4 the crimes that I've just spent a lot of time defining for you.  
5 For example, the first crime is Count One, the conspiracy to  
6 distribute cocaine and cocaine base. Each count describes what  
7 the charge is and the person who is charged in that count. For  
8 instance, in Count One, charges Alton Coles, Timothy Baukman,  
9 James Morris, and Monique Pullins with conspiracy to distribute  
10 controlled substances, we, the jury, unanimously find as  
11 follows, and then you go down through. You'll see first is  
12 Alton Coles, a place to mark either guilty or not guilty,  
13 whatever your finding is. The next page, Timothy Baukman,  
14 guilty or not guilty. Next, James Morris, guilty or not guilty  
15 with regard to Count One. Next, Monique Pullins, guilty or not  
16 guilty on Count One, and it goes through each one of the counts  
17 in the indictment in exactly the same manner. It tells you  
18 what the crime is, who is charged, and then gives you the  
19 opportunity to make your finding on the appropriate line.

20 Ladies and gentlemen, you're here to determine  
21 whether the Government has proven the guilt of the defendant  
22 for the charges in the indictment beyond a reasonable doubt.  
23 You're not called upon to return a verdict as to the guilt or  
24 innocence of any other person or persons. So if the evidence  
25 in the case convinces you beyond a reasonable doubt of the

## Jury Charge

58

1 guilt of a defendant, then you should find the defendant guilty  
2 even though you may believe that one or more other persons are  
3 also guilty, but if any reasonable doubt remains in your mind,  
4 ladies and gentlemen, after an impartial consideration of all  
5 of the evidence in the case, it's your duty to find a defendant  
6 not guilty.

7 Now, when you go out to deliberate, only 12 jurors  
8 can go out. We have a number of alternate jurors in this case,  
9 and we selected alternate jurors in the event that something  
10 were to occur during the course of the trial so that one of the  
11 original jurors could not say. That happened in one instance,  
12 but, ladies and gentlemen, only 12 of you are going to go out  
13 to deliberate.

14 The alternate jurors, we are going to impose upon you  
15 for a while longer. We are going to take you separately to a  
16 jury room to be by yourselves so that in the event that  
17 something were to occur with one of the original 12 who's  
18 deliberating, we would have the ability to move an alternate  
19 juror into the jury room for the deliberations, but alternate  
20 jurors, when you go out to the jury room that you will be  
21 using, you're not to discuss this case among yourselves. If  
22 you are ultimately selected to go into the jury room and take  
23 the place of one of the original 12, at that point, you will  
24 have the opportunity to discuss this matter with your fellow  
25 jurors with a view towards reaching a verdict in the case.

## Jury Charge

59

1           So with that, do we have the marshal? By the way,  
2 ladies and gentlemen, I told you that the -- we had made a copy  
3 of the charge that I just spent two days giving to you. You  
4 will take that out with you, and you will have that with you so  
5 that you can take a look at it as you go through the charges  
6 here, the different counts in the indictment, and you can then  
7 see what it was that I said with regard to the law in each of  
8 the instances.

9           Mr. Finney, will you swear the --

10          THE CLERK: Marshal --

11          THE COURT: -- Marshal?

12          THE CLERK: -- will you please raise your right hand  
13 state your name for the record?

14          MARSHAL HIPPLE: Marshal Gary Hipple, H I P P L E.

15                           (Marshal Sworn)

16          THE COURT: All right. Ladies and gentlemen, the 12  
17 of you, you're going to go out to the jury room to begin your  
18 deliberations. You'll have as much time as you need to reach a  
19 fair decision in this matter.

20           As I said, I'm going to talk with counsel. We will  
21 send exhibits out with you, and if there is anything else you  
22 need during the course of your deliberations, you should write  
23 it down. The foreperson should write it down, and I will  
24 address it.

25           The alternate jurors will be taken to an alternate



Jury Charge

60

1 retiring room. All right?

2 I understand the alternates have your clothing and  
3 coats and everything in Mr. Finney's office. So Mr. Finney  
4 will take you to -- out and take you to the jury room that you  
5 will be using.

6 (Pause)

7 THE COURT: Okay. Well, let's let them get situated.

8 (Pause)

9 THE COURT: Okay. Kate, will you go see whether he's  
10 cleared the area?

11 (Pause)

12 THE COURT: Okay. Mr. Finney, take the jurors out.

13 THE CLERK: Please rise.

14 (Jury out)

15 THE COURT: Okay. Have a seat, counsel. What  
16 agreements have you reached with regard to these exhibits? You  
17 were going to --

18 MR. WARREN: Judge, I -- I think Mr. Lloret and I  
19 have agreed basically to send them out, and he's prepared an  
20 index of the tapes by tab number. So if the jurors want to  
21 hear a particular tab number or tape, they can just tell us,  
22 you know, what it is they want, and I think he's done the same  
23 thing with respect to the Government's exhibit list.

24 MR. LLORET: We do, Your Honor. I think that  
25 Mr. Warren and I and certainly other counsel to the extent that

## Colloquy

61

1 they want to review it, I'd like to finalize the exhibit list.  
2 I have my notes and we've gone over it for several days on the  
3 Government's side, those items that have been admitted. I'm  
4 sure counsel want to just take a look at that.

5 I think we should probably eliminate any items that  
6 were not admitted, that were identified or not put in. So  
7 those -- that's going to have to be an editorial revision.  
8 We'll just have to knock that out over the lunch break, I  
9 think, but --

10 MR. WARREN: I think that's a little bit more  
11 practical than -- I mean, we had what, 300 exhibits or  
12 something. I don't know how logistically we can --

13 MR. LLORET: More than that. Yeah.

14 MR. WARREN: And then this way, if they want to look  
15 at something specific, they've got an index. If they want to  
16 listen to a specific tape, I think the -- the tapes were  
17 referred to by tab number. So their notes would reflect --

18 MR. LLORET: Probably.

19 MR. WARREN: -- and the index they have also  
20 identifies who the speakers are as well as the date and time of  
21 the call. So I think that's enough information for -- to the  
22 extent they want to hear one, to tell us we'd like to hear call  
23 number such and such, and then I guess we would bring them back  
24 out here and play the tape for them.

25 THE COURT: That would probably be the only way we

## Colloquy

62

1 could do it.

2 MR. LLORET: Your Honor, we'll have -- I've made  
3 arrangements to have all of the documentary and non-contraband  
4 exhibits in an office downstairs that we have so that we can  
5 react quickly to the jurors if they request certain documents,  
6 if we can see -- you know, if they want a whole passel of  
7 documents, we can just get them back. The contraband evidence  
8 we kept in a locker at ATF, the drugs and guns.

9 MR. WARREN: They don't get that.

10 MR. LLORET: But they -- they don't get that, but  
11 obviously, I think, Your Honor, if they really need to see  
12 it --

13 MR. WARREN: I've had that. Yeah.

14 MR. LLORET: -- they could come out and we could  
15 display it to them.

16 MR. WARREN: I've had that happen before, and then --  
17 yeah, you just stick it in the box and show it to them. I've  
18 even had it passed around the jury box.

19 THE COURT: You're suggesting that the non-recorded  
20 evidence and the non-contraband not go out unless or until they  
21 ask for it.

22 MR. LLORET: That would be my suggestion only for  
23 management purposes, Your Honor. Given the volume of exhibits,  
24 I can just envision sort of a swamp of boxes going back there  
25 and, you know, things sort of going kerfloey.

Colloquy

63

1 Now, it's -- Your Honor -- whatever Your Honor cares  
2 to do, we'll do.

3 THE COURT: Counsel, any other input?

4 MR. MCMAHON: I think that's -- I'm agreeable to that  
5 position.

6 THE COURT: All right. That's the way we'll handle  
7 it then.

8 MR. WARREN: Yeah, because -- I think we'd fill up  
9 the deliberation room with boxes of -- of materials.

10 THE COURT: No question about that. All right.  
11 Mr. Lloret, then you're going to go over the list with counsel,  
12 and we'll be back here at 1:30.

13 MR. LLORET: Very well, Your Honor.

14 THE COURT: All right.

15 MR. THOMPSON: Your Honor, I should place on the  
16 record I mentioned I had an issue to resolve with Mr. Lloret.  
17 We've been able to do that.

18 THE COURT: All right.

19 MR. LLORET: Thank you, Judge.

20 MR. MCMAHON: That -- just procedurally, do you want  
21 us back here at 1:30?

22 THE COURT: 1:30. Yeah.

23 MR. MCMAHON: Good.

24 THE COURT: Yeah.

25 (Recess)



## Colloquy

64

1 THE COURT: ...indictment and a copy of the Court's  
2 charge that we're sending out. Have you had the opportunity to  
3 look at it and make sure it's --

4 MR. LLORET: Judge, I trust the Court. Mr. McMahon,  
5 however, does not. So --

6 THE COURT: Okay. Mr. Finney is --

7 MR. MCMAHON: I don't trust --

8 MR. LLORET: -- just bear that in mind.

9 MR. MCMAHON: -- trust Mr. Lloret. That's who.

10 THE COURT: Mr. Finney, as soon as the attorneys have  
11 had a chance to take a look at it, take it out.

12 (Recess)

13 THE COURT: Okay. Counsel, we've received a note  
14 from the foreperson of the jury. I don't know whether you've  
15 had a chance to take a look at it. They ask for several  
16 things. Let me go down through the list.

17 They ask for Menace tapes.

18 MR. WARREN: They were never admitted into evidence.

19 THE COURT: They were not admitted into evidence, and  
20 I will tell the jury that.

21 MR. LLORET: Okay.

22 THE COURT: 525HHH red notebook.

23 MR. WARREN: Now, the problem with that, Judge, is  
24 you'll recall the portions of the red notebook had some of the  
25 stuff written in back and we couldn't identify who wrote it and

## Colloquy

65

1 it's hard -- but I think what they're referring to, because the  
2 next exhibits talk about tally sheets. I think they want --  
3 like 50 -- 501Z1 is a tally sheet that was seized from Mullica  
4 Hill, I believe. All right. 525HHH, they did admit  
5 specifically into evidence those tally sheets with --

6 THE COURT: I think perhaps what we ought to do is  
7 make a copy of the front page of that notebook, and then the  
8 tally sheet that was specifically referred to.

9 COUNSEL: Right.

10 MR. MCMAHON: That's -- I think that's the way to go  
11 too.

12 THE COURT: And send that out, and then we have 502P1  
13 and --

14 MR. MCMAHON: What is that?

15 MR. WARREN: 502P1?

16 MR. HARMELIN: I believe that has to do with my  
17 client. 502P1 is a blue tally book, page 3.

18 THE COURT: Right.

19 MR. WARREN: Tally sheets. I think they were looking  
20 at the tally sheets.

21 MR. MCMAHON: And it's 501 --

22 MR. WARREN: 501P1 is a tally sheet for Mullica Hill.

23 THE COURT: Okay. So we will give them those.

24 What --

25 MR. WARREN: New Jack City: The Next Generation was

## Colloquy

66

1 admitted into evidence.

2 THE COURT: It was admitted into evidence. There is  
3 no way for them to play it in the jury room.

4 MR. WARREN: That is true, and I think we ought to  
5 tell -- that kind of coincides their -- you see where they want  
6 phone call transcripts and wires? I think we need to advise  
7 them that if they want to hear or see this stuff, they're going  
8 to have to send us a note and we'll set it up and play it for  
9 them.

10 THE COURT: I think that's the only way it can be  
11 dealt with. There is no way to get it into the jury.

12 MR. LLORET: I don't know any other way to do it.

13 THE COURT: Yeah. Okay. Okay.

14 MR. WARREN: Grand jury testimonies, I mean, that --  
15 we can't send -- they don't get that. I mean, they're going to  
16 have rely on their recollection. I think --

17 MR. LLORET: If they're talking about the -- just the  
18 transcripts that were admitted into evidence regarding Thais  
19 Thompson, but it looks like they're asking for everybody's --

20 MR. MCMAHON: No. That's Thompson, Custis, Latney.  
21 Yeah.

22 THE COURT: They're asking for everybody's, and I  
23 think the most prudent way to deal with that is simply tell  
24 them that it's their recollection of the testimony --

25 MR. WARREN: Right.

Colloquy

67

1 THE COURT: -- that counts.

2 MR. WARREN: Right.

3 MR. MCMAHON: That's fair.

4 MR. HARMELIN: Your Honor, if I may, I noticed on the  
5 note there, they squeezed in my client's name next to Faison,  
6 and I don't believe there is any grand jury testimony regarding  
7 that.

8 THE COURT: I don't believe there is either.

9 MR. WARREN: Organizational charts all for Government  
10 and defense. Well, I didn't prepare an organizational chart.

11 MR. LLORET: I think --

12 MR. WARREN: I think they want the --

13 MR. LLORET: -- Government chart, but that's the only  
14 one.

15 MR. MCMAHON: I think they probably -- I mean, I'm  
16 not saying it's admissible, but they're probably referring to  
17 the organizational charts I used in my closing argument. I  
18 think that's what they're talking about, because it says -- it  
19 says Government and defense, and the only defense  
20 organizational chart was the ones that I used in my closing  
21 argument.

22 MR. LLORET: Well, they -- they weren't admitted.

23 MR. MCMAHON: No. I didn't say they were.

24 MR. LLORET: No. I know.

25 MR. MCMAHON: I didn't say they should be given. I'm



Colloquy

68

1 just saying that I think that's what they're referring to.

2 THE COURT: The Government's charts that were  
3 admitted can be sent out, and we can ask them to be more  
4 specific about defense charts. There were no defense charts  
5 actually offered into evidence in this case, right?

6 MR. MCMAHON: No. The only defense charts that I  
7 think they could possibly be referring to, Your Honor, is the  
8 defense chart that I used in my closing argument, the --  
9 because I did a organizational chart myself for the closing  
10 argument. If you recall, it's right over there --

11 THE COURT: Yes.

12 MR. MCMAHON: -- which was an organizational chart.  
13 So I'm not saying they should have it. I'm just saying that's  
14 what they're probably referring to.

15 THE COURT: All right.

16 MR. LLORET: Your Honor, I'll correct that. I don't  
17 think the Government's organizational chart was moved in. I  
18 think Mr. --

19 MR. WARREN: No. That was --

20 COUNSEL: You're right about that.

21 MR. WARREN: -- demonstrative, Judge.

22 MR. LLORET: I think Mr. Bresnick referred to it just  
23 as a demonstrative aid during his opening, but we never  
24 actually admitted it through a witness.

25 COUNSEL: That's correct.

## Colloquy

69

1 MR. WARREN: I think -- remember, we had a big fight  
2 about whether or they'd be allow to use -- when you allowed  
3 them to use it, it's strictly for demonstrative purposes, and  
4 that was solely the use to which it was put.

5 MR. LLORET: I have it jotted down here, Your Honor,  
6 but I think -- I just conferred with Mr. Bresnick, and neither  
7 of us recall ever actually admitting that.

8 THE COURT: We'll just simply indicate to them that  
9 there are no organizational charts that can go out with them.

10 MR. MCMAHON: Well, yeah. I think that's fair, and I  
11 think -- but I think you should say that the organizational  
12 charts were --

13 MR. WARREN: Not admitted into evidence.

14 COUNSEL: -- no admitted evidence. They were used  
15 for demonstrative purposes only.

16 MR. WARREN: Right. They're not evidence.

17 MR. LLORET: And I think the same thing could be  
18 said, Your Honor, to sort of put an end to it on the grand jury  
19 transcripts, that --

20 MR. WARREN: Yeah.

21 MR. LLORET: -- the only grand jury testimony that  
22 was admitted was very specific clips relating to Ms. Thompson,  
23 and other than that, there were none admitted.

24 MR. WARREN: They're not in evidence. Yeah.

25 MR. LLORET: Yeah.

Colloquy

70

1 THE COURT: Okay.

2 MR. WARREN: They want the mortgage file on the Pike  
3 Creek stuff. That was admitted.

4 THE COURT: That was offered into evidence.

5 MR. LLORET: Yes.

6 MR. SMITH: Yeah, but Your Honor, I'm not sure if the  
7 -- and please correct me if I'm wrong, Your Honor, but I'm not  
8 sure if the Pike Creek file was here, that we received  
9 everything from Pike Creek. I'm not sure if we have all the  
10 notes, memos, paperwork in both NVR as well as Pike Creek, but  
11 most certainly Pike Creek.

12 MR. LLORET: We do. I mean, what's in evidence is in  
13 evidence.

14 MR. WARREN: Yeah.

15 THE COURT: All right.

16 MR. WARREN: Take Down's financial records. That, I  
17 think, they're accepting my invitation to review the stuff that  
18 was moved into evidence by the Government that was seized.

19 MR. LLORET: That's in evidence.

20 MR. WARREN: That's in evidence. Yeah.

21 THE COURT: We have that?

22 MR. LLORET: Yes. That's with Agent -- the various  
23 materials that Agent Armstrong testified to.

24 THE COURT: All right.

25 MR. LLORET: That will be available.

Colloquy

71

1 THE COURT: Okay. We'll tell them they can have  
2 that.

3 MR. WARREN: Easel and paper. As long as it doesn't  
4 say they sold cocaine, I have no objection to sending it back.

5 MR. LLORET: As long as it doesn't have Mr. Warren's  
6 notes all over it.

7 COUNSEL: Was that a weasel or easel, Your Honor?

8 THE COURT: We'll send out an easel with a stand so  
9 that they can use it for their own purposes.

10 MR. WARREN: And, you know, just for the record, they  
11 seemed to have made pretty good notes of what the exhibit  
12 numbers were and, you know -- I don't think they'll have any  
13 trouble identifying whatever it is they want. So --

14 THE COURT: All right. Mr. Finney -- well, before we  
15 get to that, Mr. Lloret, what do you have?

16 MR. LLORET: Yes, Your Honor. There is two documents  
17 that we've -- we've brought over now, Your Honor. One is the  
18 index of calls. Let me hand up a copy of this to Your Honor.  
19 the index of calls relates obviously to the various phone calls  
20 that were put into evidence.

21 I've been through this on several occasions. The --  
22 there are actually two indexes. One is by tab and goes  
23 sequentially by the tab numbers under which they were  
24 introduced --

25 THE COURT: Uh-huh.



## Colloquy

72

1 MR. LLORET: -- and it references also the book  
2 number, and the second one is actually by exhibit number and  
3 cross references the tab. So there is -- there is actually two  
4 indexes or indices --

5 THE COURT: All right.

6 MR. LLORET: -- for the convenience of the jurors.  
7 The second is the Government has put together its final trial  
8 exhibit list. I circulated that to defense, and I don't think  
9 we have any disputes about the items that the Government  
10 contends are in evidence. What we've done, Your Honor, is  
11 eliminate the items that were not placed into evidence, and  
12 that's -- and that's that.

13 THE COURT: All right. Counsel agree that the index  
14 and the trial exhibit list should go out with the jury?

15 MR. WARREN: Yes, sir. I've looked at it. It's  
16 fine.

17 THE COURT: No objection?

18 MR. SMITH: Does the index list have the call -- the  
19 intercept by -- introduced by Mr. Warren in here.

20 MR. WARREN: No, it doesn't. That would be defense  
21 exhibit --

22 MR. HETZNECKER: Judge, we'll try to compile --  
23 compile a list of defense exhibits so that can go out as well.

24 THE COURT: All right.

25 MR. HETZNECKER: We're in the process of doing that.

## Colloquy

73

1 Judge, may I make a comment about the grand jury notes? I  
2 agree generally. The only distinction is because  
3 Ms. Thompson's evidence is specific with respect to an grand  
4 jury testimony, I simply would like the jury to be informed  
5 that since it was two weeks ago, that if they want to hear it,  
6 they can request to hear it rather than sending the transcript  
7 out. In other words --

8 MR. LLORET: It was read to them.

9 THE COURT: It was read to them, I believe. You  
10 don't have a --

11 MR. HETZNECKER: No, but if it was -- but if they  
12 have questions about it, that they're certainly able to hear it  
13 again if they want to hear that evidence again as opposed to  
14 sending the transcript

15 THE COURT: You mean it can be read to them again.

16 MR. HETZNECKER: Correct.

17 THE COURT: All right.

18 MR. WARREN: I've got -- for Mr. Smith's -- I've got  
19 DC-10, which was just the transcript of the -- now, I only  
20 played four pages.

21 THE COURT: Well, why don't you make a list of the --

22 MR. WARREN: We are.

23 THE COURT: -- defense exhibits, and we will take a  
24 look at that and get that out. Okay? Mr. Lloret?

25 MR. LLORET: I guess the final thing I wanted to ask

Colloquy

74

1 Your Honor, does Your Honor want these documents for review  
2 before they're sent back to the jury or not?

3 THE COURT: I will take a look at them, but counsel  
4 have all looked at them. Counsel have agreed that there is no  
5 problem with sending those out, that they represent an  
6 appropriate index of calls, an appropriate index of exhibits.

7 MR. MCMAHON: Yes, Your Honor.

8 THE COURT: All right.

9 MR. WARREN: Yes, Your Honor.

10 MR. HARMELIN: Yes, Your Honor.

11 MR. WARREN: Like section 4, exculpatory evidence,  
12 they've carved that out.

13 MR. LLORET: No. None of that in there. Okay.  
14 Thanks, Your Honor.

15 THE COURT: All right.

16 MR. LLORET: Shall we mark these, Your Honor, in some  
17 fashion?

18 MR. WARREN: Call them court exhibits.

19 MR. LLORET: I can mark them with Government's --  
20 pick a Government's exhibit in the 800 series just so that they  
21 have an identifier on them for the record.

22 THE COURT: Well, they would not be listed on the  
23 list though.

24 MR. LLORET: We'd get into a self referential  
25 problem.

## Colloquy

75

1 MR. WARREN: We can have these as -- you know, I've  
2 had -- the last time we did that, I think we just marked it as  
3 court exhibits.

4 THE COURT: I think it would appropriate. Counsel  
5 have all agreed that they should go out with the jury. We'll  
6 mark them as Court exhibit 1 and 2.

7 MR. LLORET: And, Your Honor, if Your Honor could  
8 give -- I always -- I mean, this is a great convenience, I  
9 think, for the jury, but if they can be cautioned again that  
10 obviously, this is not evidence. It's done for their  
11 convenience, and the evidence is -- is the evidence.

12 THE COURT: All right.

13 MR. LLORET: And their recollection controls.

14 THE COURT: All right.

15 MR. LLORET: Thank you, Your Honor. Your Honor, I'll  
16 hand these up to the Court.

17 THE COURT: Okay.

18 (Pause)

19 MR. LLORET: Your Honor, Mr. -- Agent Armstrong  
20 raises a point which I guess is perhaps we could ask the  
21 jurors, if they want the whole 700 series that Agent Armstrong  
22 relied upon in creating financial -- obviously, they're  
23 available and we can give them back to them. That's a  
24 substantial volume of documents. I think at least three or  
25 four boxes.



## Colloquy

76

1 We're fine with that, but if they want to be more  
2 specific -- I don't know that they can be, but if they can be  
3 more specific, we can try to isolate for them, but if they want  
4 the whole -- the whole thing, we'll give them the whole thing  
5 gladly.

6 MR. WARREN: Judge, I think they're responding to my  
7 argument to take a look at these records, because they weren't  
8 really kept all that uniformly or that much together to begin  
9 with. I mean, that's --

10 THE COURT: Well, we will tell them that they're --  
11 the documents are in evidence. There are boxes full of them.  
12 If they want to be more specific, they can do that. If they  
13 want --

14 MR. LLORET: If they want them all --

15 THE COURT: -- all of them, we will send them out.

16 MR. LLORET: That's fine. Thank you, Your Honor.

17 (Pause)

18 THE COURT: Okay. Mr. Finney, do you want to bring  
19 the jurors in?

20 (Pause)

21 MR. LLORET: Your Honor, if I may address something  
22 with the Court and with counsel, I'm aware that the --  
23 obviously, the transcripts are not in evidence --

24 THE CLERK: Please rise.

25 THE COURT: We'll talk about it at sidebar,

## Colloquy

77

1 Mr. Lloret.

2 MR. LLORET: Very well.

3 (Jury in)

4 THE COURT: Okay. Ladies and gentlemen, have a seat.  
5 The foreperson of your jury has sent out a request for certain  
6 exhibits. I want to go through your request and tell you what  
7 we can give you and what we can't.

8 Ladies and gentlemen, with regard to the first  
9 request, Menace tapes, the Menace tapes were not offered into  
10 evidence during the course of this trial. They are not  
11 available for your consideration.

12 Exhibit 525HHH, 502P1, and 501Z1, with regard to  
13 525HHH, to the extent that that was used during the course of  
14 the trial, we will send that exhibit out to you. 502P1 and  
15 502Z1 -- 501Z1 we will send out for your consideration.

16 Ladies and gentlemen, the request for phone calls --  
17 phone call transcripts and wires, we do not have an ability to  
18 send out to you the recording or wires of those phone calls.  
19 If you want to hear any phone call, we can play it for you, but  
20 we will have to bring you back into court to hear.

21 The next request is New Jack City: The Next  
22 Generation. Again, that videotape was shown to you. If you  
23 wish to see it again, we can play it for you, but it will have  
24 to be out here in the courtroom. We can -- we do not have the  
25 ability to play that for you back in the jury room.

## Colloquy

78

1 Grand jury testimony, with regard to the grand jury  
2 testimony, that testimony was not offered into evidence, and we  
3 do not have that testimony for you with the exception you heard  
4 read certain excerpts from testimony with regard to Thais  
5 Thompson. If you wish to have those sections reread to you, we  
6 can do that.

7 Organizational charts, there were no organizational  
8 charts actually offered into evidence during the course of the  
9 trial. So those are not available.

10 NVR mortgage paperwork, Pike Creek file, we have  
11 those exhibits. They were offered into evidence during the  
12 trial. We will send them out with you.

13 Take Down financial records, I am advised that the  
14 Take Down financial records are in probably four large boxes.  
15 We can send those boxes out to you if you want all of those  
16 records. They were offered into evidence during the trial.  
17 On the other hand, if you request specific records, we will try  
18 to find them and give those to you.

19 So it's entirely up to you, ladies and gentlemen. If  
20 you want all of the records in the jury room, you may have  
21 them. If you want some of them, specify exactly what you'd  
22 like to have.

23 And easel and paper, we can do that. We'll give you  
24 an easel and paper and even writing instruments for it. Okay?

25 Now, for your convenience, ladies and gentlemen,

## Colloquy

79

1 counsel have agreed to send out as -- what we've marked Court  
2 exhibit 1, Court exhibit 2. They are an index of the calls  
3 that were made and which you heard and which you saw the  
4 transcripts of. There is also an index of trial exhibits, all  
5 the trial exhibits. Counsel have agreed that this index, court  
6 exhibit 1 and court exhibit 2, both accurately reflect the --  
7 and index the calls and index exhibits. So we're going to send  
8 that out for your convenience to help you determine what it is  
9 you may want to see or hear. Okay?

10 Ladies and gentlemen, I'm going to send you back out  
11 at this point and ask you to continue your deliberations.  
12 Again, if there are any additional requests and based upon what  
13 I have said to you, I imagine there will be. But in any event,  
14 write down the request, specific request, and we will attempt  
15 to accommodate your request. All right?

16 Counsel, anything further?

17 MR. MCMAHON: No, Your Honor.

18 MR. WARREN: No, sir.

19 THE COURT: All right. Mr. Finney, you want to take  
20 the jury out?

21 THE CLERK: Please rise.

22 (Jury out)

23 THE COURT: Counsel, Mr. Lloret, you were saying  
24 something.

25 MR. LLORET: I was just saying, Your Honor, what



## Colloquy

80

1 we've done is based on the list, we've taken and cleaned out  
2 the transcript list. I don't know what counsel's preference  
3 is, whether it's just to have the jurors listen to the tapes  
4 with transcripts in hand as they listen to the tapes, but I'm  
5 going to have to have the staff go and collect those books and  
6 get them all cleaned up if we're going to do that. We have to  
7 have at least 12 of them cleaned up. So that there are certain  
8 tabs in there that need to be pulled and things like that.

9 MR. WARREN: I mean, there are three transcript books  
10 are sitting there --

11 MR. LLORET: Yeah.

12 MR. WARREN: -- for them. I mean --

13 MR. LLORET: I just want to make sure that we look at  
14 those books and make sure they conform.

15 THE COURT: I think you should look at them so that  
16 anything that should not be in them at this point is not in  
17 them. Counsel, it might save an awful lot of trouble if  
18 counsel could agree as to those transcript books and let them  
19 go out. Then we would not have the jury coming back trying to  
20 hear phone calls, but that's entirely up to you.

21 MR. LLORET: I'd love to, Judge, but as you'll  
22 recall, some of the positions we took is that the transcripts  
23 don't accurately --

24 THE COURT: Right.

25 MR. LLORET: -- reflect what was said on the tapes,

Colloquy

81

1 and I'd be derelict in my duty if I let them go back there  
2 without listening to the stuff.

3 THE COURT: All right. I understand your position.

4 (Pause)

5 THE COURT: Okay. Counsel, is there anything else at  
6 this juncture?

7 MR. LLORET: Your Honor, I'll say I'm going to  
8 explore with my office the possibility of having a computer  
9 that's available with a disk burn. The problems are typically  
10 that there is also sorts of Government material on these  
11 computers in the form of software, but hopefully, I can get one  
12 that's clean that the jury can take with it, and that would  
13 probably obviate a lot of issues.

14 THE COURT: That would solve a lot of problems.

15 MR. WARREN: Yeah. If they can do it back there,  
16 that's fine.

17 MR. LLORET: All right. I'll look into that.

18 MR. WARREN: And assuming that somebody is computer  
19 -- I mean, it's a pretty simple exercise.

20 THE COURT: Well, that's the next question, is  
21 anybody able to do it.

22 MR. WARREN: Anybody on the jury computer -- assuming  
23 that -- I'm sure we can just give them a disk burner back there  
24 that just has the admissible stuff on it. Then the next  
25 question would be can we get somebody back there that actually

## Colloquy

82

1 play the stuff.

2 THE COURT: I'm sure Agent Horay would be happy to go  
3 back.

4 MR. WARREN: Oh, I'm sure she would. I'll tell you  
5 what, you know, and then we can send a representative from the  
6 defense back there to, right?

7 MR. LLORET: Well, Your Honor, the other thing was  
8 Mr. Hetznecker mentioned that there may be a couple of  
9 recordings that need to be added to that list which I don't  
10 think is as much of a problem is if there is something that  
11 needs to be taken off. So I'm going to check that right now.

12 THE COURT: All right. Well, talk to them and --

13 MR. LLORET: Yeah.

14 THE COURT: -- see whether you agree.

15 MR. LLORET: Okay.

16 THE COURT: Okay. The only other comment I'd make is  
17 that several of these jurors evidently are smokers, and they  
18 have been taken out to smoke privately.

19 MR. WARREN: I object to that, Judge. You know --

20 THE COURT: In this day and age, you wonder why  
21 anybody would, but in any event --

22 COUNSEL: Including Mr. Warren.

23 COUNSEL: Especially Mr. Warren. It really helps  
24 with the flu too, you know, but --

25 THE COURT: All right. Well, the --

Colloquy

83

1 MR. WARREN: I have no problem if they go out. I  
2 mean --

3 MR. LLORET: No.

4 MR. WARREN: -- none whatsoever, Judge.

5 THE COURT: The marshals usually take them down to a  
6 private place.

7 MR. LLORET: Well, Your Honor, we have several items  
8 to take care of and I have to go look at documents, make copies  
9 of some of the items like 525HHH. So with Your Honor's  
10 permission, I'll go take care of those.

11 THE COURT: Go right ahead, and counsel --

12 MR. WARREN: I'm here, Judge.

13 THE COURT: -- I'm not going to -- I'm going to ask  
14 that you stay around to see what may happen next. I don't know  
15 how long this -- the jury is going to want to deliberate, and  
16 perhaps it won't be necessary for you to be here all the time  
17 as long as you're available, but at least for the time being,  
18 stay around.

19 MR. WARREN: That's fine.

20 MR. LLORET: Okay. Thanks, Your Honor.

21 (Recess)

22 THE COURT: Mr. Lloret, there was some question about  
23 the indictment that went out and some question about some  
24 language in it.

25 MR. LLORET: Yes, Your Honor.



## Colloquy

84

1 THE COURT: And based upon your agreement with  
2 Mr. Powell and Mr. Finney amended the language that was  
3 objectionable.

4 MR. LLORET: Yes, Your Honor. Your Honor, if I can  
5 just -- I'll just make the record. It was at page 20 of the  
6 redacted indictment, paragraph 78. This was an allegation that  
7 on or about August 10th of 2005, Defendants James Morris and  
8 Thais Thompson possessed approximately \$559,396.21 in drug  
9 proceeds, and the original read several kilo wrappers. The  
10 amendment that's been agreed to by Mr. Powell and Mr. Thompson  
11 and I is that it would read in drug proceeds, wrapping  
12 material, and then proceed. So it's a neutral language as  
13 opposed to the kilo wrappers.

14 THE COURT: All right. And everyone has agreed that  
15 that can be done?

16 MR. LLORET: Your Honor, there is no objections from  
17 other defense counsel. Obviously, this was at the suggestion  
18 of Mr. Powell and Mr. Thompson, and I agreed to that.

19 THE COURT: It's all right.

20 MR. LLORET: Thank you.

21 THE COURT: Mr. Finney, would you take the amended --

22 MR. LLORET: Thank you, sir.

23 THE COURT: -- redacted.

24 MR. LLORET: The amended redacted. Thank you,  
25 Your Honor. Mike, I'll be downstairs.

Colloquy

85

1 MR. BRESNICK: Fine. I have your cell phone.

2 MR. LLORET: Okay.

3 MR. BRESNICK: Thank you.

4 (Recess)

5 MR. WARREN: I've gone over -- we've gone over the  
6 exhibits, Your Honor.

7 THE COURT: I just want to make sure there is no  
8 problem.

9 (Pause)

10 THE COURT: Okay. Counsel, Mr. Finney said --  
11 advised me that you had gotten together the exhibits that the  
12 jury requested and you have them, and everybody agrees that  
13 they are the proper exhibits and can go out. Is that correct?

14 MR. WARREN: That's correct, Judge. We looked at  
15 them, all four of us did.

16 MR. MCMAHON: Yes, we did, Your Honor.

17 MR. WARREN: They're fine.

18 MR. MCMAHON: That is correct.

19 MR. WARREN: And we have not heard back from them on  
20 whether or not they -- what, if anything, they wanted, the Take  
21 Down business records. We're just waiting to hear what --  
22 what, if anything, they've got to say about it. So --

23 THE COURT: Okay. Mr. Hetznecker?

24 MR. HETZNECKER: Yeah. Your Honor, we have a list of  
25 defense exhibits that have been handwritten out. We just need

## Colloquy

86

1 copies that we have a copy as well. This will go out as well  
2 if the Government is agreeable.

3 MR. LLORET: All right. I'll take a copy and review  
4 it, Your Honor, but I don't think I'm going to have a big  
5 problem.

6 MR. WARREN Please don't stick it in the tally sheet  
7 folder.

8 THE COURT: If there is no objection, Mr. Lloret,  
9 just give it to Mr. Finney and he'll take it --

10 MR. LLORET: We'll do.

11 THE COURT: -- out without us convening --

12 MR. LLORET: Reconvening.

13 THE COURT: -- another conference.

14 MR. LLORET: Okay. Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. WARREN: Do you want us to hang out here, Judge?

17 THE COURT: It's four o'clock. They're going to be  
18 going home at 5:00. So yes. Okay.

19 (Recess)

20 THE CLERK: Please rise.

21 (Jury in)

22 THE COURT: Okay. Have a seat, ladies and gentlemen.  
23 It is now five o'clock, and we are going to recess for the day,  
24 but before we recess, I want to caution you again.

25 The 12 of you who are in the jury room adjacent to

## Colloquy

87

1 this courtroom and the 6 of you who are in another jury room as  
2 alternates, we don't want you discussing this case with anyone,  
3 and we don't want anyone discussing the case with you. We're  
4 going to ask you to be back tomorrow at 9:15 ready to go.

5 When you come in tomorrow, the 12 of you who are  
6 deliberating at the present time will return to this courtroom  
7 and to this jury room adjacent to the courtroom. The alternate  
8 jurors, you will return to the jury room that you have been  
9 using since the deliberations started.

10 Don't talk to each other about this case between now  
11 and tomorrow morning. When you leave here, you're going to be  
12 going home. You may be walking out of here together, but don't  
13 discuss the case among yourselves. Do your deliberation in the  
14 jury room where they should be done. Don't talk to each other  
15 outside of the jury room, and when you return tomorrow, when  
16 you return to the jury room, when all of you are assembled,  
17 when all of you are there in the jury room, then you can begin  
18 your deliberations. I will not bring you back into court  
19 tomorrow morning first thing. Just go right into the jury  
20 room, and when all of you are there, then you can begin your  
21 deliberations tomorrow and continue your deliberations.

22 And the jurors who are alternates, as I said, you  
23 will go back to the jury room that you are using at the present  
24 time, and there will be somebody there with you. Okay?

25 It's five o'clock. We'll see you tomorrow at 9:15.



Colloquy

88

1 Counsel -- well, ladies and gentlemen, you are excused.

2 Mr. Finney, will you take the jurors out?

3 THE CLERK: Please rise.

4 (Jury out)

5 THE COURT: Okay. Counsel, I'm not going to require  
6 that you be here tomorrow at 9:15, but I'm going to require  
7 that you give Mr. Finney your cell phone number and that you be  
8 available within 15 minutes so that if we get a question or we  
9 get a request for an exhibit or something like that, you can  
10 get back here and we can deal with it.

11 MR. MCMAHON: Fine.

12 THE COURT: Okay.

13 MR. MCMAHON: Thank you.

14 MR. LLORET: Very well, Your Honor.

15 THE COURT: Okay?

16 MR. WARREN: No problem, Judge. Very well.

17 MR. HARMELIN: Your Honor, it's impractical for me --  
18 impracticable for me to do anything other than come down since,  
19 you know, I couldn't possibly get here from West Chester in 15  
20 minutes. What time would you like me to be down here? Is 9:30  
21 early enough?

22 THE COURT: Yes, indeed.

23 MR. HARMELIN: Okay.

24 THE COURT: I would think so, and we'll open up the  
25 law library downstairs for you.

Colloquy

89

1 MR. MCMAHON: Go see a movie or something.

2 MR. HARMELIN: Thank you.

3 THE COURT: Mr. Lloret, there was some discussion  
4 earlier about whether or not you could make arrangements to get  
5 a computer that could --

6 MR. WARREN: Be used and played by them.

7 MR. LLORET: Yes.

8 THE COURT: -- play the audiotapes or videotapes in  
9 the jury room. Have you made any progress on that?

10 MR. LLORET: Yes, Your Honor. I was advised by the  
11 computer people over at our office that they'll be able to have  
12 a clean computer. They have to go in and inspect the computer  
13 and clean it off basically before they give it, but -- but they  
14 should have one available by about midmorning tomorrow morning.  
15 So we should be in a position. We'll have a disk with all of  
16 the pertinent calls or the calls in evidence, and we'll have a  
17 computer available for the jury to -- and they can take it  
18 back.

19 THE COURT: Okay. Well, then the next problem will  
20 be if they make requests of this nature, we're going to have to  
21 determine whether anybody on that jury is able to deal with the  
22 computer and play the --

23 MR. LLORET: Judge, I think the --

24 THE COURT: -- tapes.

25 MR. LLORET: I anticipate that, although, obviously,

## Colloquy

90

1 we can bring them in here and show them, but I think the  
2 program is sufficiently simple in terms of it's really just  
3 pull up a screen and double click on the -- on the file that  
4 you want, and it's by session number. So I think they'll be in  
5 pretty good shape, but we'll -- we'll play that by ear.

6 THE COURT: All right.

7 MR. LLORET: Deal with that.

8 THE COURT: Does any -- do any defense counsel have  
9 any objection to that?

10 MR. MCMAHON: No.

11 MR. WARREN: No. In fact --

12 COUNSEL: No.

13 MR. WARREN: -- I think we joined in the request that  
14 that option be made -- be made available to the jury.

15 THE COURT: All right.

16 MR. LLORET: The only question I have, Your Honor, is  
17 should I have the -- the New Jack City video put on that disk  
18 as well?

19 THE COURT: You should certainly do that in the event  
20 that they want to see that.

21 MR. LLORET: We'll do that.

22 MR. WARREN: I think it should be first.

23 MR. LLORET: Okay.

24 THE COURT: All right. We'll see you tomorrow some  
25 time, gentlemen.



(Court Adjourned)

\* \* \* \* \*

C E R T I F I C A T I O N

I, Maureen Emmons, court approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.

Maureen Emmons

Date: 04/21/08

MAUREEN EMMONS

DIANA DOMAN TRANSCRIBING